STATE OF MICHIGAN

COURT OF APPEALS

AMANDA WIETECHA,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED
November 22, 2022

No. 359203
Macomb Circuit Court
LC No. 2020-002812-CD

Before: GLEICHER, C.J., and SERVITTO and YATES, JJ.

PER CURIAM.

In this action filed under the Elliott-Larsen Civil Rights Act (CRA), MCL 37.2101 *et seq.*, plaintiff appeals as of right the trial court's award of summary disposition to defendant under MCR 2.116(C)(10) on plaintiff's claims of sex discrimination, hostile work environment, and retaliation. The record contains evidence of several deplorable acts involving one of plaintiff's coworkers, but legal responsibility for those improper acts cannot be assigned to defendant, Michigan Department of Corrections (MDOC). Therefore, we affirm.

I. FACTUAL BACKGROUND

Plaintiff was pregnant when she started working for defendant in September of 2017. The issues in this case stem from sexually inappropriate conduct directed toward plaintiff by her former coworker, David Morales. In 2017, plaintiff job shadowed Morales from September 11 through October 12. During that period, Morales engaged in three sexually inappropriate actions. First, while job shadowing, plaintiff told Morales that she had to return to her office to retrieve lotion to apply to her abdomen that was intended to prevent pregnancy-related stretch marks. In response, Morales opined that plaintiff must not have stretch marks on her breasts. Second, when plaintiff told Morales that her mother had breast-reduction surgery, Morales asked plaintiff where she got her small breasts if her mother had large breasts. In the last incident, Morales walked up behind plaintiff, rubbed or massaged her shoulders for five to ten seconds, and commented that she was not as tense as he thought she would be. No one else witnessed any of these incidents.

After the last incident, plaintiff reported the events to her supervisor, Lori Grimes. Plaintiff asked to job shadow a different agent, but she requested that Morales's conduct not be reported in

a formal complaint because plaintiff was a new employee. Grimes stated that she was obligated by defendant's policy to report any knowledge of sexual harassment, but she nevertheless honored plaintiff's request. Grimes found plaintiff another agent to job shadow and did not make a formal report of the incidents. According to plaintiff, Grimes also told her that Morales had been "weird" with another female agent,[1] and that understanding of Morales was an opinion several other female coworkers shared with plaintiff.

Plaintiff went on maternity leave from November 9, 2017, through April 2, 2018. During that time, she heard from a coworker that Morales had called her a "b***h," a "psycho," and an "insecure, whiney person." When plaintiff returned from maternity leave, she reported Morales's remarks to Grimes and expressed her desire to officially report her sexual-harassment allegations against Morales. Plaintiff also confronted Morales about those comments after she returned from maternity leave. Morales responded to plaintiff by stating that he respected her as a coworker and "that's all this relationship will ever be." After defendant sent out an e-mail on April 20, 2018, encouraging employees to report any harassment, plaintiff convinced herself to report Morales's conduct. Plaintiff filed a sexual-harassment report against Morales on April 30, 2018.

Damon Hawkins conducted the investigation into plaintiff's sexual-harassment complaint against Morales. Hawkins completed his investigation and found sufficient evidence to support plaintiff's allegations that Morales sexually harassed her and made disparaging remarks about her. Hawkins gave his investigation report to a supervisor, Beverly Smith, who reviewed the report and sent the report on to the internal-affairs office. Smith agreed with Hawkins's finding that Morales committed inhumane treatment by making disparaging remarks about plaintiff because there were witnesses, but Smith disagreed with Hawkins's conclusion that Morales committed discriminatory harassment because there was no witness to Morales's comments about plaintiff's breasts or his touching of plaintiff. Smith testified in her deposition that she had disagreed with the conclusion of an investigator maybe twice in her career, with plaintiff's case being one of them. Defendant's internal-affairs office agreed with Smith's conclusion that there was sufficient evidence to support the finding that Morales made derogatory statements, but not that he sexually harassed plaintiff. Morales was thereafter referred to a disciplinary committee, which imposed a three-day suspension on Morales for his actions.

After Morales was suspended for his remarks, plaintiff complained of several incidents that occurred after she reported his conduct that she believed were made in retaliation for her report. According to plaintiff, around the time she first reported Morales's conduct to Grimes, a coworker heard Grimes tell Morales that "you know I still love you" as she concluded a conversation with him. After plaintiff reported Morales's conduct to Grimes, Morales had long conversations outside plaintiff's doorway and repeatedly walked by the office of the coworker plaintiff was assigned to job shadow, which plaintiff believed was an attempt to intimidate her. There was a rumor, which plaintiff did not know who started, that plaintiff had made insulting comments concerning another female agent. After plaintiff reported Morales's conduct, Grimes changed from complimenting plaintiff's work to criticizing it and questioning plaintiff's ability to do her job. In another instance, plaintiff accidently broke MDOC protocol by bringing a pistol into her office. Grimes told plaintiff

[1] During her deposition, Grimes denied telling plaintiff this.

that the incident did not look good "with everything you have going on," which plaintiff interpreted to mean her sexual-harassment complaint. Once, when plaintiff took a vacation day, she did not reschedule the offenders who reported to her to come in on a different day, so Grimes sent a text message to plaintiff's personal cell phone telling her that she should have rescheduled them. There was also an incident when Morales called the supervisor of plaintiff's husband to complain about what Morales deemed threatening behavior. Plaintiff's husband was a Clinton Township police officer, and Morales testified at his deposition that one morning while Morales was walking into defendant's facility in Mount Clemens, plaintiff's husband drove his police cruiser to near where Morales was walking and asked plaintiff whether "this is the guy." Morales felt it was necessary to notify plaintiff's husband's supervisor, whom he had met before, because he felt threatened. On June 6, 2018, plaintiff filed another complaint against Morales, alleging that he retaliated against her for filing the sexual-harassment complaint.

Plaintiff ultimately gave a two-week resignation notice from her position with defendant on August 21, 2018. After leaving her job with defendant, plaintiff filed another complaint against Morales. Despite plaintiff's resignation, plaintiff's second and third complaints against Morales were investigated by defendant.

On April 2, 2020, plaintiff filed a three-count complaint against defendant alleging claims of sex discrimination, hostile work environment, and retaliation under the CRA. On July 2, 2021, defendant sought summary disposition under MCR 2.116(C)(10) on all three claims. Defendant argued that plaintiff was not constructively discharged and received no other adverse employment action, so she could not prove her sex-discrimination and retaliation claims. Regarding plaintiff's hostile-work-environment claim, defendant contended that Morales's conduct was not severe or pervasive enough to establish the existence of a hostile work environment and that defendant took prompt remedial action when plaintiff reported Morales's conduct. In October 2021, the trial court issued an 18-page opinion and order agreeing with defendant's arguments and awarding summary disposition under MCR 2.116(C)(10) to defendant. This appeal followed.

II. LEGAL ANALYSIS

Our task on appeal is to review the trial court's order granting summary disposition under MCR 2.116(C)(10) to defendant on all three counts in the complaint. "We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A summary disposition motion filed pursuant to MCR 2.116(C)(10) "tests the *factual sufficiency* of a claim." *Id.* at 160. The motion may be granted if "there is no genuine issue of material fact." *Id.* " 'A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ.' " *Id.* The court should consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties, and must view that evidence in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). With these legal principles in mind, we shall address in turn each of plaintiff's three claims under the CRA.

A. SEX DISCRIMINATION

Plaintiff argues that the trial court erred when it granted summary disposition to defendant on her sex-discrimination claim. We disagree. Under the CRA, it is impermissible for an employer to engage in discriminatory practices on the basis of sex. MCL 37.2102. Regarding employment discrimination, the statute provides:

> (1) An employer shall not do any of the following:
>
> (a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status. [MCL 37.2202(1)(a).]

The CRA specifically defines sex-based harassment as follows:

> (i) 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:
>
> * * *
>
> (*iii*) The conduct or communication has the purpose or effect of substantially interfering with an individual's employment . . . . [MCL 37.2103(i)(*iii*).]

A sex-discrimination claim may be proven by " 'direct evidence or by indirect or circumstantial evidence.' " *Major v Village of Newberry*, 316 Mich App 527, 540; 892 NW2d 402 (2016).

Direct evidence is evidence that "requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions." *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001). There are two requirements that a plaintiff must meet to succeed on a claim of direct evidence of discrimination. First, "[a] plaintiff must show that the defendant was predisposed to discriminate against the plaintiff and actually acted on that disposition." *Graham v Ford*, 237 Mich App 670, 676; 604 NW2d 713 (1999). Second, "the plaintiff must establish direct proof that the discriminatory animus was causally related to the decisionmaker's action." *Id*. at 677. Here, plaintiff has not met her burden of showing direct evidence of sex discrimination. Plaintiff argues only that she suffered discrimination by the comments and unwanted touching by Morales. Although Morales may have been predisposed to discriminate against women and acted upon it, he was not a decisionmaker with respect to plaintiff. Her job shadowing of Morales was not an official arrangement, and there is no evidence that Morales had any authority over plaintiff.

When a plaintiff fails to offer direct evidence of discrimination, the plaintiff may instead proceed under the *McDonnell Douglas*[2] burden-shifting framework. *White v Dep't of Transp*, 334 Mich App 98, 107; 964 NW2d 88 (2020). The plaintiff must first establish a prima facie case of employment discrimination. *Id*. at 108. To do so, the plaintiff must show that: (1) she belongs to a protected class; (2) she suffered an adverse employment action; (3) she was qualified for the position; and (4) she was treated differently than similarly situated employees who were not in a protected group. *Hazle*, 464 Mich at 463. Establishing a prima facie case triggers the presumption that the defendant's actions were discriminatory. *White*, 334 Mich App at 108. The defendant can rebut that presumption by presenting "a legitimate, nondiscriminatory reason" for the employment action. *Id*. If the defendant meets its burden of offering a nondiscriminatory reason, the burden then shifts back to the plaintiff to show the proffered reason was a pretext for discrimination. *Id*.

"A prima facie case of discrimination under the Civil Rights Act can be made by proving either disparate treatment or disparate impact." *Duranceau v Alpena Power Co*, 250 Mich App 179, 181-182; 646 NW2d 872 (2002). Plaintiff's claim is one for disparate treatment, as opposed to disparate impact, because she has not challenged a policy that produced a discriminatory effect. *Id*. at 182. "To avoid summary disposition under the disparate treatment theory, the plaintiff must present sufficient evidence to permit a reasonable juror to find that for the same or similar conduct the plaintiff was treated differently from a similarly situated male employee." *Id*.

Plaintiff can satisfy the first and third elements of a discrimination claim. That is, plaintiff belongs to a protected group, but everybody is part of a protected group on the basis of sex because everyone can suffer discrimination on that basis. *Radtke v Everett*, 442 Mich 368, 383; 501 NW2d 155 (1993). There is also no dispute that plaintiff was qualified for her job. Grimes testified that plaintiff was not a bad employee. But plaintiff cannot satisfy the second and fourth elements.

Regarding the second element, plaintiff did not suffer an adverse employment action. "[I]n order to be actionable, an employment action must be materially adverse to the employee—that is, it must be more than a mere inconvenience or minor alteration of job responsibilities." *Chen v Wayne State Univ*, 284 Mich App 172, 201; 771 NW2d 820 (2009). Whether an employment action is adverse is evaluated under an objective standard, and a plaintiff's subjective views on the employment action do not control. *Id*. Plaintiff contends that she suffered an adverse employment action by being constructively discharged because resignation was her only option to escape sexual harassment and discrimination. Constructive discharge has occurred if the plaintiff involuntarily gave up employment as a result of the employer's actions. *Jewett v Mesick Consol Sch Dist*, 332 Mich App 462, 471; 957 NW2d 377 (2020). "A constructive discharge occurs when an employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation or, stated differently, when working conditions become so difficult or unpleasant that a reasonable person in the employee's shoes would feel compelled to resign." *Id*. at 471-472.

In this case, no fact suggests that defendant was deliberately attempting to make plaintiff's working environment intolerable. When plaintiff told Grimes that Morales was sexually harassing her, Grimes found plaintiff somebody new to job shadow and took it upon herself to tell Morales

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

that plaintiff would not be job shadowing him anymore. When plaintiff filed her formal complaint, defendant investigated the incidents and, within weeks, recommended that Morales be disciplined. Plaintiff had only one face-to-face encounter with Morales after she reported the harassment, and plaintiff did not describe that encounter as hostile. Additionally, plaintiff's letter of resignation is dated August 21, 2018, but it states that her resignation was not effective until September 7, 2018, nearly three weeks later. None of this evidence suggests that defendant ever made the employment intolerable or intended it to be so for plaintiff. Therefore, plaintiff cannot show that she suffered an adverse employment action.

Likewise, plaintiff cannot show that she was treated differently than similarly situated male coworkers. A plaintiff is similarly situated to a coworker when she is similar in "all of the relevant aspects" and the employment situations are "nearly identical." *Town v Mich Bell Tel Co*, 455 Mich 688, 699-700; 568 NW2d 64 (1997), abrogated in part on other grounds by *Gross v FLB Fin Servs, Inc*, 557 US 167; 129 S Ct 2343; 174 L Ed 2d 119 (2009). Plaintiff relies on three examples that she claims show she was treated differently than her similarly situated coworkers: (1) Morales's harassing behavior only targeted females; (2) Smith recommended changing the finding of the investigation of Morales from sufficient evidence of sexual harassment to insufficient evidence on that point; and (3) Grimes sent plaintiff a text message while she was taking a vacation day.

Regarding Morales's conduct, the comments plaintiff references did not rise to the level of creating a situation where females were treated differently than males. In the context of disparate treatment, they were stray remarks. Stray remarks are not actionable. *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 136 n 8; 666 NW2d 186 (2003). Whether remarks are stray remarks depends upon five factors:

> (1) whether they were made by a decision maker or an agent within the scope of his employment, (2) whether they were related to the decision-making process, (3) whether they were vague and ambiguous or clearly reflective of discriminatory bias, (4) whether they were isolated or part of a pattern of biased comments, and (5) whether they were made close in time to the adverse employment decision. [*Id.*]

Morales was not a decisionmaker, and his remarks did not relate to any decision-making process. Morales's first two remarks about plaintiff's breasts may have been the beginning of a pattern, but they were not close in time to when plaintiff claims she was constructively discharged. Plaintiff does not point to any sexist remarks that occurred after she presented her first formal complaint of discrimination. At least in terms of a disparate-treatment claim, Morales's comments were stray remarks that did not rise to the level of creating a situation in which plaintiff was treated worse than similarly situated male employees.

Similarly, plaintiff's theory that Morales's "creepy" behavior created disparate treatment fails. Plaintiff essentially argues that Morales's disposition or affect gave rise to a discriminatory environment by making women uncomfortable. There is no suggestion in the CRA or in caselaw that someone's mere personality, absent words or actions, can support a disparate-treatment claim. Besides Morales's stray remarks, plaintiff has not identified any words or actions that support her contention that Morales's being "creepy" resulted in disparate treatment.

Plaintiff next argues that she was treated differently than similarly situated male employees when Smith recommended changing the finding of the sexual-harassment investigation of Morales to insufficient evidence even though Hawkins determined that there was sufficient evidence of the charge. Generally speaking, the decision did not affect the treatment of plaintiff; it simply affected the treatment of Morales. And, more specifically, Smith merely decided to give the benefit of the doubt to the accused when there was no witness to the alleged behavior. Plaintiff has not identified any other situation in which the accuser was given the benefit of the doubt over the accused. Thus, plaintiff's argument lacks merit.

Finally, plaintiff contends that she was treated differently than similarly situated coworkers when Grimes sent her a text message about rescheduling parolee and probationer visits while she was on a scheduled day off. But plaintiff has not shown she was treated differently than similarly situated coworkers. Plaintiff has not identified anyone else who was ever contacted by Grimes on a scheduled day off. Nor has plaintiff identified any instance in which another agent neglected to reschedule meetings when he was on scheduled time off. Furthermore, shortly after Grimes sent the text message to plaintiff, Grimes announced to all of her supervisors that the rescheduling of appointments that fall on days off should occur. In light of this evidence, plaintiff has not shown that she was treated differently than other similarly situated employees.

Even if plaintiff could present a prima facie case of employment discrimination, she would still bear the burden of proving that defendant's proffered nondiscriminatory reason for the action was pretextual. *White*, 334 Mich App at 108. A plaintiff can prove that the employer's proffered reason is pretextual "(1) by showing the reasons had no basis in fact, (2) if they have a basis in fact, by showing that they were not the actual factors motivating the decision, or (3) if they were factors, by showing that they were jointly insufficient to justify the decision." *Major*, 316 Mich App at 542. To survive a summary disposition motion, the plaintiff must show that a rational trier of fact could find that discrimination was at least a motivating factor for the adverse employment action. *White*, 334 Mich App at 109.

Even if plaintiff suffered an adverse employment action, her proffered evidence does not demonstrate that the reasons for the action were pretexts for discrimination.[3] Plaintiff argues that Grimes's actions after plaintiff made her complaint show pretext. Plaintiff contends that, after she broke the MDOC rule against bringing a firearm into the office, Grimes's comment that "it doesn't look good with everything that you have going on" shows that plaintiff was being targeted. This statement could readily be attributable to the fact that plaintiff was admittedly being critiqued by Grimes at that time for the quality of her work. But even drawing all inferences about the statement in plaintiff's favor, plaintiff was never investigated or disciplined for bringing her firearm into the office or for anything else.

Plaintiff next insists that she can prove pretext because, after Grimes told Morales that plaintiff would not be job shadowing him anymore, Grimes said that "you know I still love you"

[3] Defendant never actually made an argument that there was a nondiscriminatory reason for an adverse employment decision. Defendant argued that there was no adverse employment action and that, even if plaintiff could identify an adverse action, she could not show that any reason for the action was pretextual.

to Morales when she concluded the conversation. Grimes testified in her deposition that she often used that kind of language with coworkers. Plaintiff has not suggested that, when Grimes said she still loved Morales, Grimes and Morales were discussing plaintiff's complaints about Morales's behavior toward her. There is also no evidence that Grimes played any role in the investigation of Morales other than being interviewed by Hawkins, so Grimes's alleged bias could not have had an impact on the investigation. Accordingly, plaintiff has not met her burden of showing a basis to conclude that defendant's proffered nondiscriminatory reasons for its actions were pretextual.

In sum, plaintiff has failed to show that she suffered any adverse employment action, that she was treated differently than any similarly situated coworker, or that any reason for defendant's employment action was a pretext for discrimination. Accordingly, the trial court correctly granted summary disposition to defendant on plaintiff's sex-discrimination claim.

B. HOSTILE WORK ENVIRONMENT

Plaintiff contends that the trial court erred when it granted summary disposition in favor of defendant on her claim that she was subjected to a hostile work environment. Our Supreme Court set forth the elements of a hostile-work-environment claim in *Quinto v Cross & Peters Co*, 451 Mich 358, 368-369; 547 NW2d 314 (1996), stating that the plaintiff must show:

> (1) the employee belonged to a protected group; (2) the employee was subjected to communication or conduct on the basis of [her protected status]; (3) the employee was subjected to unwelcome . . . conduct or communication [involving her protected status]; (4) the unwelcome . . . conduct was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment; and (5) respondeat superior. [*Id*.]

Whether a hostile work environment existed is judged under an objective standard. *Radtke*, 442 Mich at 394. The question is "whether a reasonable person, in the totality of circumstances, would have perceived the conduct at issue as substantially interfering with the plaintiff's employment or having the purpose or effect of creating an intimidating, hostile, or offensive employment environment." *Id*. The factors to consider "include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Quinto*, 451 Mich at 370 n 9.

Plaintiff can establish four of these elements. As we previously discussed, plaintiff belongs to a protected group on the basis of her sex. *Radtke*, 442 Mich at 383. As to the second and third elements, plaintiff was subjected to communication based upon sex because Morales's comments concerned a part of plaintiff's anatomy particular to women. Plaintiff can also show that Morales's comments and his conduct in rubbing plaintiff's shoulders were unwelcome because she reported it to Grimes and subsequently asked to job shadow somebody different. Plaintiff can also satisfy the fourth element because she has presented ample evidence that Morales's conduct created an intimidating, hostile, and offensive work environment. Indeed, a reasonable jury could conclude that Morales's conduct created a hostile work environment because of the effect it had on plaintiff. During plaintiff's first month on the job, Morales made two sexually-tinged comments to plaintiff and physically touched her. After plaintiff returned from maternity leave, Morales told plaintiff

that he respected her as a coworker and "that's all this relationship will ever be," giving rise to the reasonable inference that Morales had made sexual advances directed at plaintiff. Furthermore, Morales's actions had an objectively substantial effect on plaintiff, as evidenced by an independent medical evaluation from a psychiatrist, who concluded plaintiff suffered from posttraumatic stress disorder as a result of the incidents and plaintiff's overall employment with defendant. From that evidence, a reasonable jury could find that, on an objective basis, Morales created a hostile work environment for plaintiff. *Radtke*, 442 Mich at 394.

Plaintiff cannot, however, satisfy the final element of respondeat superior. As the Supreme Court has commented, "strict imposition of vicarious liability on an employer is illogical in a pure hostile environment setting because, generally, in such a case, the supervisor acts outside the scope of actual or apparent authority to hire, fire, discipline, or promote." *Chambers v Trettco, Inc*, 463 Mich 297, 311; 614 NW2d 910 (2000) (quotation marks omitted). Hence, "in cases involving a hostile work environment claim, a plaintiff must show some *fault* on the part of the employer." *Id.* at 312. An employer can avoid liability when a plaintiff is sexually harassed by a coworker if the employer " 'adequately investigated and took prompt and appropriate remedial action upon notice of the alleged hostile work environment.' " *Id.*

Defendant's actions after it received plaintiff's complaint satisfy the standard for avoiding liability under *Chambers*. Although Grimes discouraged plaintiff from making a formal complaint about Morales after plaintiff returned from maternity leave, when plaintiff first told Grimes about Morales's conduct, plaintiff asked Grimes not to report Morales's sexual harassment in a formal complaint. As soon as plaintiff reported Morales's conduct to Grimes and requested a job shadow with a different coworker, Grimes identified another coworker for her to shadow. Grimes also told Morales about the change, thereby freeing plaintiff from having that conversation with Morales. Although Grimes did not follow MDOC policy, she took prompt remedial action that put an end to Morales's sexual harassment. Further, after she made her initial complaint, plaintiff barely had contact with Morales. After plaintiff returned from maternity leave, she had one communication with Morales by e-mail, and in that one conversation Morales told plaintiff he wanted to keep their interactions professional. After plaintiff first reported Morales's conduct to Grimes, plaintiff was not subjected to any additional sexual harassment.

Beyond that, on April 20, 2018, defendant sent an e-mail encouraging employees to report any harassment, which convinced plaintiff that she should report Morales's conduct. Plaintiff filed her formal complaint on April 30, 2018. Hawkins had begun conducting formal interviews for his investigation by May 17, 2018. Hawkins finished his report and submitted it to the internal-affairs office on June 7, 2018. Morales was then disciplined. There was no significant delay in starting the investigation or concluding it. Further, defendant followed its policy of mandatory reporting when plaintiff's coworkers were disciplined for failing to report the incidents of sexual harassment plaintiff had reported to them. Morales was not plaintiff's supervisor, defendant's response was prompt and appropriate, and defendant did not permit plaintiff to suffer further sexual harassment after she reported Morales's conduct. See *Chambers*, 463 Mich at 311. Under the circumstances, defendant's actions were sufficient to avoid liability on a respondeat-superior theory. Therefore, the trial court properly awarded defendant summary disposition on the hostile-work-environment claim.

C. RETALIATION

Plaintiff asserts that the trial court erred in awarding summary disposition to defendant on the claim of retaliation under the CRA. We disagree. Under the CRA,

> (1) Two or more persons shall not conspire to, or a person shall not:
>
> (a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act. [MCL 37.2701(a).]

To succeed on a retaliation claim, a plaintiff must show: (1) that she engaged in a CRA-protected activity; (2) that that activity was known by the defendant; (3) that the defendant took an adverse employment action against the plaintiff; and (4) that "there was a causal connection" between the plaintiff's protected activity and the subsequent adverse employment action. *El-Khalil*, 504 Mich at 161.

Plaintiff can satisfy the first two elements of her retaliation claim because she can show that she engaged in CRA-protected activity and that defendant knew about it. "An employee need not specifically cite the CRA when making a charge under the act." *Barrett v Kirtland Community College*, 245 Mich App 306, 318-319; 628 NW2d 63 (2001), superseded on other grounds by *Moldanado v Ford Motor Co*, 476 Mich 372; 719 NW2d 809 (2006). Plaintiff's report simply had to "clearly convey to an objective employer that the employee is raising the specter of a claim of unlawful discrimination pursuant to the CRA." *Id*. at 319. Although plaintiff did not cite the CRA, she engaged in protected activity when she reported Morales's sexual harassment to Grimes and when she filed a formal complaint. Defendant knew about the protected activity not only because of plaintiff's complaints, but also because it investigated and disciplined Morales.

But plaintiff cannot show she suffered an adverse employment action. In *White*, we ruled that the scope of adverse employment actions that are retaliatory is broader than in discrimination claims. *White*, 334 Mich App at 118. Whether an employee suffered an adverse employment decision that was retaliatory must be assessed under the reasonable-employee standard. *Id*. at 120-121. An employment decision is retaliatory when it would have " 'dissuaded a reasonable worker from making or supporting a charge of discrimination.' " *Id*. at 118, quoting *Burlington Northern & Santa Fe R Co v White*, 548 US 53, 68; 126 S Ct 2405; 165 L Ed 2d 345 (2006). A petty slight, a minor annoyance, or a lack of good manners does not rise to the level of retaliation. *White*, 334 Mich App at 118.

Plaintiff has cited four incidents as adverse employment acts: constructive discharge; being targeted in retaliation for her complaints; suffering increased scrutiny from Grimes; and retaliatory harassment. As we have already explained, plaintiff was not constructively discharged. Plaintiff insists that she was "targeted" by defendant in retaliation for making complaints against Morales. But the record does not support that plaintiff was targeted by defendant. Plaintiff has not identified any investigation into her conduct, and she admitted that she never received any formal discipline while she worked for defendant, even though she violated MDOC policy when she brought a gun

into her office. Although defendant's internal-affairs practices may be troubling, there is nothing to suggest they were targeted at plaintiff.

With regard to plaintiff's allegations concerning Grimes, plaintiff cannot show that she was singled out for any increased scrutiny. Plaintiff claims that, after she reported Morales's conduct, Grimes changed from complimenting plaintiff's work to criticizing it and questioning plaintiff's ability to do her job. But plaintiff was never actually disciplined, nor did she receive any type of official reprimand for the quality of her work. Plaintiff described an example of Grimes's criticism as Grimes saying that plaintiff's reports "weren't the greatest" or were just "okay." Considering that plaintiff had only been on the job for a few months when Grimes made those statements, the comments do not amount to something more than minor annoyances, which are not actionable.

Plaintiff's principal argument is that defendant permitted plaintiff's coworkers to engage in retaliatory harassment of her. To support her argument, plaintiff relies on *Meyer v Center Line*, 242 Mich App 560; 619 NW2d 182 (2000), where the plaintiff filed an employment-discrimination claim against the city of Center Line for failing to hire her. *Id*. at 563. The plaintiff complained of harassment by coworkers in retaliation for filing her lawsuit, and her supervisor refused to stop the harassment. *Id*. at 563, 568. We held that when harassment by coworkers is sufficiently severe, a supervisor's failure to act to stop the treatment can constitute a material change in the conditions of employment, thereby supporting a claim of retaliation. *Id*. at 571.

Plaintiff cites instances of alleged harassment that she claims Grimes tolerated, creating a change in plaintiff's employment conditions and supporting her retaliation claim. In one instance, there was a rumor that plaintiff had called another agent a "whore," but plaintiff did not know who started that rumor. In another instance, the cell phone of the agent plaintiff was accused of calling a "whore" was lost and vandalized. Morales found the phone and then "insinuated" that plaintiff and other female agents may have been responsible. This alleged conduct simply constitutes petty slights, minor annoyances, or a lack of good manners, rather than actionable misconduct.

A more serious incident occurred when Morales called the supervisor of plaintiff's husband to complain that plaintiff's husband had intimidated him. Plaintiff testified that her husband was parked in his police cruiser in defendant's parking lot and was there to deliver her driver's license, which she had forgotten. The accounts of plaintiff and Morales were consistent in that plaintiff's husband was present as plaintiff was walking into the building in front of Morales and that Morales and plaintiff's husband did not exchange words. Morales testified that plaintiff's husband drove toward him in an aggressive manner and asked plaintiff whether "this is the guy," and then he sped off. Morales felt threatened to the point he thought it was necessary to notify plaintiff's husband's supervisor, whom he had met before.

The harassment alleged in this case is insufficiently severe to find that Grimes or defendant caused or tolerated a material change in plaintiff's employment. The plaintiff in *Meyer* complained of pervasive harassment (including 16 offensive notes or cartoons left in the plaintiff's workspace) that was not remedied by her employer. *Meyer*, 242 Mich App at 568. Here, plaintiff complains about a handful of instances of unrelated conduct. The most serious is Morales's phone call to the supervisor of plaintiff's husband. To be sure, it is debatable whether Morales's phone call to the supervisor of plaintiff's husband was intended to harass or retaliate against plaintiff. Morales also

insinuated that plaintiff may have played a role in vandalizing a coworker's phone, but there is no evidence that defendant ever took that accusation against plaintiff seriously.

Nor is there any allegation that a supervisor participated in any type of harassment directed at plaintiff. Unlike the situation in *Meyer*, the incidents here do not involve the type of systematic harassment that was ignored by a supervisor. Plaintiff's formal complaint only made a conclusory allegation that Morales retaliated against her. It did not address conduct by any other coworkers. Most importantly, defendant did not tolerate Morales's conduct, which resulted in an investigation that went on long after plaintiff had left her employment with defendant. An unsourced rumor, an insinuated accusation, and a single phone call to a spouse's supervisor are insufficiently severe to support a finding that Grimes or defendant took an adverse employment action against plaintiff.

Beyond that, plaintiff has not shown any causal connection between her protected activity and her claims of retaliation. Plaintiff argues that Grimes's comment to Morales that she still loved him and her comment to plaintiff that bringing a gun into her office was "not a good look," in light of the timing of those statements, showed targeting by defendant, increased scrutiny of plaintiff's work, or retaliatory harassment. At worst, Grimes's comments illustrate she did not believe that Morales sexually harassed plaintiff. But there is no evidence that such a belief actually caused any retaliation against plaintiff. If Grimes wanted to target plaintiff, an investigation would have been launched into plaintiff's bringing a firearm into her office. Further, the alleged increased scrutiny of plaintiff's work did not rise above the level of negative comments to a new employee. There is also no evidence that Grimes or any other supervisors participated in, encouraged, or tolerated any harassment of plaintiff. Accordingly, plaintiff has failed to meet her burden of showing a causal connection between her protected activity and an adverse employment action. Thus, the trial court properly granted summary disposition to defendant on plaintiff's retaliation claim.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Deborah A. Servitto
/s/ Christopher P. Yates