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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0273**

Bridgette A. Allan,
Appellant,

vs.

United Piping, Inc.,
Respondent.

**Filed September 24, 2018
Affirmed
Peterson, Judge**

St. Louis County District Court
File No. 69DU-CV-17-400

Robert E. Mathias, Duluth, Minnesota (for appellant)

Gina K. Janeiro, Jennifer A. Nodes, Jackson Lewis P.C., Minneapolis, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Cleary, Chief Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Appellant challenges the summary-judgment dismissal of her hostile-work-environment claim under the Minnesota Human Rights Act (MHRA), asserting that the district court erred by failing to view the facts in the light most favorable to her claim and

by determining that there are no genuine issues of material fact precluding summary judgment. We affirm.

FACTS

Respondent United Piping, Inc. (UPI) is a general contracting company that performs services for the oil and gas pipeline industry. Bob Schoneberger was UPI's president, Mel Olson was the vice president of construction, and Shawn Helmer was the risk-management director. UPI's policy manual prohibited unlawful workplace harassment and discrimination and set forth a procedure for reporting and addressing incidents of harassment and discrimination. The policy stated that UPI would "keep any report of alleged harassment, discrimination or inappropriate conduct as confidential as possible" but that UPI might "need to disclose certain information on a business need-to-know basis, including in connection with an investigation into a complaint." UPI also had an open-door policy that stated: "The Company has an open door policy. If at any time you have any questions or concerns about Company policies, procedures, or any workplace problems, you are encouraged to raise them with your supervisor, or if you prefer, with any management personnel."

In June 2014, Chad Walsh, a UPI foreman and the half-brother of appellant Bridgette A. Allan, hired Allan to work as a laborer on a hydrovac crew. In October 2014, Walsh moved Allan to the hydrovac service truck, which was a more desirable job. Supervisor Rich Osowskey testified in a deposition that some of Allan's coworkers, including Josh Myrhe and Justin Hultquist, complained about Allan's work performance. Osowskey testified that he addressed Allan's work ethics and performance twice with

Walsh. Beginning in January 2015, Allan worked with Charles Kaufman on a hydrovac truck. Kaufman testified in a deposition that, once they began working together, during morning safety meetings, he heard negative comments about Allan, some of which were related to her being a woman on the job.

On February 6, 2015, Allan contacted Olson to report issues that she was having with some of her co-workers, and he agreed to meet with her the next morning. Schoneberger and Helmer also attended the meeting, Schoneberger began the meeting by thanking Allan for contacting Olson and stating that he knew that it took a lot of courage for her to do so and that it was important for management to learn about and address problems promptly. Allan then described to them several incidents of harassment that she had experienced.

At the end of the meeting, Olson thanked Allan for contacting him, and Schoneberger asked what outcome she wanted. Olson asked whether Allan believed that the conduct she reported was based on the fact that she is a woman or was due to her being Walsh's sister, and Allan stated that it could be due to both factors. Schoneberger stated that Allan deserved to be treated with respect and that UPI would work to address the issues that she had reported.

On February 9, 2015, Schoneberger and Helmer met with five of six employees involved in the reported harassment. Schoneberger stated that UPI had been contacted by an employee and that the employees at the meeting had been identified as having interactions with Allan that created a hostile work environment. Schoneberger stressed that every employee deserves to be treated fairly and respectfully, and there was a

discussion about fair and respectful treatment of employees. Schoneberger warned that further allegations of misconduct, including retaliation, would result in discharge from employment, and written reprimands were placed in the personnel files of the employees who attended the meeting and the employee involved in the harassment who did not attend the meeting.

Helmer met with Allan on February 26, 2015. Helmer asked whether Allan's work environment had improved since UPI had taken remedial measures, and Allan responded that she felt like two of the employees were still harassing her. When asked "if there was anything else," Allan said, "No." Helmer asked "if there was anything more [Allan] wanted [him] to do to address her concerns and [she] responded that she did not know."

Shortly thereafter, Helmer met with Schoneberger and Olson to discuss Allan's continued concerns about the two employees. At Schoneberger's request, Helmer scheduled mandatory anti-discrimination and anti-harassment training for all employees on March 11, 2015. About 158 employees attended the training session, including Allan. According to Helmer:

The training focused on UPI's commitment to a harassment and discrimination free working environment, UPI's policies prohibiting discrimination and harassment in the workplace, reviewed UPI's discrimination and harassment reporting requirements, discussed the potential consequences for engaging in discriminatory and/or harassing conduct, and presented several workplace scenarios to reinforce core learning concepts and UPI's policies.

Kaufman testified that, during the training session, he saw many employees staring at Allan and that the training session did not change employees' behavior toward Allan.

Foreman Lance Gaudet reported to Helmer that Allan said that she felt uncomfortable during the training. Allan stated in an affidavit that she “was subjected to intentional intimidation by [a presenter],” who “deliberately focused her remarks on [Allan].” The day after the training, Schoneberger and Olson met with Allan, and, according to Schoneberger, Allan stated “that she felt ‘uncomfortable’ during the training and felt that ‘everyone in the room’ was staring at her.” Schoneberger stated that UPI had not intended to make her feel uncomfortable. Schoneberger explained that the purpose of the training was to ensure that UPI’s employees understood UPI’s anti-discrimination and anti-harassment policies and the consequences of violations and knew what to do if they observed violations. Allan did not raise any additional concerns or ask Schoneberger “to take specific action on her behalf.”

On Monday, March 16, 2015, Allan called Helmer to further discuss the March 11 training. When Helmer suggested that Allan meet with him and/or Olson, Allan stated that she would only meet with them with her attorney present. Helmer asked Allan to have her attorney contact him to schedule a meeting, but Allan’s attorney did not contact Helmer. On March 20, 2015, Helmer asked Gaudet to tell Allan that Helmer wanted to talk to her about a meeting, but Allan did not contact Helmer. On Monday, March 23, 2015, Helmer got Allan’s cell-phone number from Gaudet. Helmer and Allan talked by phone, and Allan again stated that she would not meet with him without her attorney present.

Allan gave UPI permission to contact her attorney to schedule a meeting. UPI’s attorney called Allan’s attorney and left a voicemail in which she identified herself as UPI’s attorney and stated that she was calling about Allan, but Allan’s attorney did not return her

call. On April 8, 2015, Helmer met Allan at her jobsite and said that her attorney had not responded to UPI. Helmer again asked Allan to have her attorney call him to schedule a meeting. Helmer also gave her a letter, which stated:

Please know that [UPI] takes your concerns very seriously and wishes to address them in a manner that is both expeditious and effective. In order to meet this goal, however, we must further understand the basis of your concerns. We are unable to do so without meeting with you to discuss further. Thus, if you believe that further action is required to address this situation, I ask that you reach out to me, either personally or through your attorney, to schedule a meeting.

On April 11, 2015, Helmer received a text message that he believed was from Allan, requesting to meet. On April 14, Helmer met Allan at her jobsite, acknowledged the text message, and told Allan that her attorney had not returned UPI's many calls requesting a meeting. Allan stated that she had not texted Helmer, and Helmer later learned that the text came from Gaudet. Allan said that she had hired a new attorney and that she would have him call Helmer.

Helmer gave Allan a letter stating that a meeting between her, Schoneberger, Olson, and Helmer was scheduled for April 16, 2015, at 7:30 a.m. at UPI's headquarters. The letter also stated:

Please know that [UPI] takes your concerns very seriously and wishes to address them in a manner that is both expeditious and effective. . . . This is not a disciplinary meeting – this is a meeting solely to discuss your concerns with the workplace and determine what, if anything, needs to be done to further address the situation. Your attorney is not to be present; however, you may bring a union representative with you if you wish.

Neither Allan nor her attorney contacted Helmer or any other member of UPI's management team, and neither showed up for the April 16 meeting.

Allan was laid off from UPI on about April 19, 2015. In February 2016, she began this action against UPI. The district court granted summary judgment for UPI. This appeal followed.

D E C I S I O N

Summary judgment is appropriate when the record shows “that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03. We review the district court’s grant of summary judgment *de novo*, to determine whether any genuine issues of material fact exist and whether the district court erred in applying the law. *Mattson Ridge, LLC v. Clear Rock Title, LLP*, 824 N.W.2d 622, 627 (Minn. 2012). “We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76–77 (Minn. 2002). “However, summary judgment on a claim is mandatory against a party who fails to establish an essential element of that claim, if that party has the burden of proof, because this failure renders all other facts immaterial.” *Lloyd v. In Home Health, Inc.*, 523 N.W.2d 2, 3 (Minn. App. 1994).

Under the MHRA, “[i]t is an unfair employment practice for an employer, because of . . . sex . . . to . . . discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment.” Minn. Stat. § 363A.08, subd. 2(3) (2016). “[T]he MHRA permits a hostile work environment claim based on sex,” and “verbal and physical harassment directed at an

employee because of her sex may constitute discrimination in the terms and conditions of employment.” *LaMont v. Indep. Sch. Dist. No. 728*, 814 N.W.2d 14, 21 (Minn. 2012).

To succeed on a hostile work environment claim, a plaintiff must prove that (1) she is a member of a protected group; (2) she was subject to unwelcome harassment; (3) the harassment was based on membership in a protected group; (4) the harassment affected a term, condition or privilege of her employment; and (5) the employer knew of or should have known of the harassment and failed to take appropriate remedial action.

Id. (quotation omitted).

The district court concluded that, as a woman, Allan is a member of a protected class, but that she failed to present sufficient evidence to create a genuine fact issue on the other four elements of her claim. With respect to the fifth element, Minnesota courts have identified three types of remedial action: “1) preventative measures, such as the dissemination of a sexual harassment policy, or the establishment of a well-publicized procedure for resolving such complaints; 2) the employer’s efforts to alleviate the victim’s plight, such as transferring her to another shift or job site; and 3) the investigation of the complaint and discipline of the offender.” *Grozdanich v. Leisure Hills Health Ctr., Inc.*, 25 F. Supp. 2d 953, 976 (D. Minn. 1998).

UPI had anti-harassment and open-door policies in place that prohibited unlawful workplace harassment and encouraged employees to address “any workplace problems” with “any management personnel.” Allan availed herself of these preventative measures by contacting Olson to report the harassment. UPI promptly addressed Allan’s harassment allegations by meeting with her and then meeting with five of six employees involved in

the reported harassment. At the meeting with the five employees, Schoneberger stressed the requirements of the anti-harassment policy, and there was a discussion about proper treatment of employees. Allan objects to Schoneberger and Helmer identifying her during the meeting. They did identify Allan as the target of the harassment but did not identify the employee who reported the harassment, and Allan does not suggest any means by which UPI could have addressed her harassment allegations with the involved employees without identifying her as the target of the harassment. Written reprimands were placed in the personnel files of the employees at the meeting and in the personnel file of an employee involved in the reported harassment who did not attend the meeting, and the employees were warned that further allegations of misconduct could result in termination.

UPI followed up by meeting with Allan about two weeks later, and, when she reported continuing harassment, UPI held mandatory anti-discrimination and anti-harassment training for all employees. Although Allan stated in an affidavit that the presenter at the training session intentionally intimidated Allan and focused her remarks on Allan, Allan cites no evidence of specific conduct by the presenter that supports this assertion. Following the training session, UPI asked Allan if anything further needed to be addressed, but Allan and her attorney prevented UPI from taking any further remedial action by failing to respond to UPI's attempts to contact them to set up another meeting.

To withstand summary judgment, a party "must present specific facts showing that there is a genuine issue for trial"; speculation and general assertions are insufficient. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (quotation omitted). UPI promptly addressed Allan's complaints and took remedial measures to end

the harassment, and there is no evidence of any appropriate remedial measures that UPI failed to take. The evidence, therefore, is insufficient to create a genuine fact issue on the fifth element of a hostile-work-environment claim. See *Cont'l Can Co. v. State*, 297 N.W.2d 241, 248 (Minn. 1980) (citing *Howard v. Nat'l Cash Register Co.*, 388 F. Supp. 603 (S.D. Ohio 1975) (concluding that employer was not liable for racial harassment when management transferred employee to another shift, held frequent meetings with him and the head of his department, disseminated the company's anti-harassment policy to all employees, and took disciplinary action against the harassers)); *Fore v. Health Dimensions, Inc.*, 509 N.W.2d 557, 561 (Minn. App. 1993) (citing *Davis v. Tri-State Mack Distribs., Inc.*, 981 F.2d 340, 343 (8th Cir. 1992) (stating that employer is not required to fire harasser but must take action reasonably calculated to end harassment)).

Because Allan has failed to present sufficient evidence to establish the fifth element of her claim, we need not address the remaining elements. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001) (stating that summary judgment is required when a party fails to establish an essential element of a claim for which that party has the burden of proof), *review denied* (Minn. Oct. 16, 2001).

Affirmed.