IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SUSAN TALLEY, Individually, Appellant, v. SEATTLE PUBLIC SCHOOLS, Respondent.	)	No. 80934-2-I UNPUBLISHED OPINION

BOWMAN, J. — Susan Talley sued Seattle Public Schools (SPS), alleging several forms of discrimination based on her race, age, and gender. She also claimed negligent and intentional infliction of emotional distress. The trial court dismissed Talley's claims on summary judgment. Because Talley failed to produce specific and material facts sufficient to support her allegations, we affirm.

FACTS

Talley is an African-American woman over 40 years old. She has been the administrative secretary at SPS' Dunlap Elementary School since 2002. According to Principal Winifred Todd and many of the Dunlap staff, Talley is a "[h]ighly competent and efficient" administrative secretary who knows her job well.

In September 2015, Issa El Hayek joined Dunlap as the assistant principal to Todd. El Hayek was new to SPS and school administration. On October 30, 2015, SPS' Southeast Region Executive Director of Schools Kelly Aramaki announced that El Hayek would become interim principal of Dunlap. Principal Todd would temporarily serve as interim principal at neighboring Martin Luther King Jr. Elementary School (MLK) while MLK's principal was on administrative leave.

El Hayek started as Dunlap's interim principal on November 2, 2015. That morning, he called for a meeting with Talley and office assistant Creigh Haty. Talley and Haty said they "couldn't meet" because they were busy checking in students for the day and there was no one to "cover the phones." El Hayek insisted they meet, and eventually, Talley met with him while Haty covered the office duties. Before the meeting, Talley e-mailed a colleague at another school, saying, "OMG![1] Winifred [Todd] is gone and we have a little dictator here now and he is about to get cussed out."

According to Talley's account of that first meeting, El Hayek informed her that Aramaki had "directed" him to make some changes at Dunlap, including keeping the front door unlocked in the morning and Talley greeting each person as they arrive. Talley insisted the door remain locked for safety reasons. El Hayek told Talley that failure to follow the directions could cause her to be "snatched" from her job. After hearing these "directives," Talley told El Hayek

[1] "Oh my God," "oh my gosh," or "oh my goodness."

that she would no longer meet with him unless she had a union representative with her. She declined to speak with him several times throughout the day.

Shortly after her meeting with El Hayek, Talley e-mailed Aramaki to report that she felt "harassed, undermined and threatened by [El Hayek] and his actions." She also e-mailed Todd on November 2, complaining about El Hayek:

> This is not going to work with Issa here. He undermines what is put in place and is sneaky about what he is doing which should involve the office staff not just him and his agenda. If he makes it through today it will be by the skin of his teeth!!

The relationship between Talley and El Hayek continued to deteriorate. El Hayek started questioning Dunlap staff about Talley. He asked instructional assistant Christopher Glenn if he liked Talley. During meetings designed to get to know the staff, El Hayek asked if they had any issues with Talley. He told people that he received daily complaints about Talley and asked staff to report their complaints.

Glenn saw El Hayek "be aggressive" and give Talley directions, saying, " 'This is your job description and this is what I need you to do and there's no ifs, ands, or buts. This is how it's going to be done.' " El Hayek told Glenn, " 'I'm the principal. She needs to know her place.' " And, " 'I can't work with Susan . . . [b]ecause she doesn't listen.' " El Hayek told substitute staff member Evelyn Beeler that he "needed to control" Talley and that "if he was a woman it would be easier."

Talley said that El Hayek would become angry and stand over her with his fists clenched. According to Talley, this happened "whenever I challenged him, whenever he would ask something or ask me to do something and I challenged

him about why or — or give him reasons why it can't be done, that's when he would get mad."

Talley complained to her SPS friends about El Hayek's requests and refused to open his e-mails because "I thought he wanted something from me." She told a Dunlap staff member, "Please don't ask him anything. He doesn't know anything!!"

Talley communicated her frustrations to Todd many times. In mid-November, Todd responded to one of Talley's e-mails, encouraging Talley to make El Hayek "crazy":

> You just keep working the plan. Send me the e[-]mails and I'll write the response. You breathe, write in your notebook and talk with other people to make him crazy! You do know that . . . when you don't have anything to say to him it drives him crazy. He is obsessed with you. I told you!

Todd also recommended that Talley stop writing the monthly newsletter to "[g]ive him rope." At one point, Talley e-mailed Todd that El Hayek "is about to crack!"

On January 7, 2016, Talley filed an SPS harassment, intimidation, and bullying (HIB) complaint against El Hayek. She alleged that El Hayek made the workplace "uncomfortable and unsafe" for her, citing several disagreements with his policies and their interpersonal dynamic. She made no allegations of discriminatory conduct in the complaint.

Soon after Talley filed the HIB complaint, El Hayek issued Talley two letters of counseling, both dated January 13, 2016. One letter explained that its purpose "is to inform you that you must follow my directions as a supervisor."

The letter states:

> Because several of my instructions to you have been meet [sic] with resistance or perplexity, I am putting my expectations down in writing. In the future, any failure to follow my direction will result in progressive discipline being imposed.

El Hayek then outlined his three expectations that Talley (1) receive his written approval for nonemergency communications with families, (2) provide him with advance notice of leave for a "personal emergency or personal illness," and (3) obtain his permission to use the school intercom for nonemergency purposes. The second counseling letter accused Talley of using inappropriate language in the office and provided "a formal reminder" of SPS policy that she could not use profane language at school.

Talley wrote responses to the letters denying the allegations, accusing El Hayek of using profanity, and complaining about his micromanagement. She hoped he could "find a balance between giving directive, micromanaging and undermining me in order for me to effectively complete my job responsibilities."

On February 2, 2016, Talley filed a second HIB complaint against El Hayek with SPS. Talley added allegations of discrimination based on race, gender, and age.

Ten days later on February 12, an incident occurred at Dunlap involving El Hayek and Talley's husband Ben Lawton, a teacher at MLK. Because Talley claimed she was afraid of El Hayek, Lawton sometimes walked Talley to her car after school. On that day, Lawton and El Hayek exchanged words in the Dunlap parking lot in front of several employees. El Hayek called SPS security and the police to report that Lawton had threatened and harassed him. SPS immediately

placed Talley and Lawton on paid administrative leave pending an investigation into the allegations.

El Hayek petitioned for a restraining order against Lawton. At the hearing, Dunlap instructional assistants Glenn and Joseph Phillips testified that El Hayek was the aggressor and that Lawton never threatened El Hayek. Phillips, who was "new" and "trying to graduate to become a teacher," also testified that he felt pressured by El Hayek to testify in El Hayek's favor. But Phillips refused "to lie." Phillips said El Hayek gave him a "horrible" performance review for that school year.[2]

SPS eventually determined that Talley and Lawton's actions on February 12, 2016 did not warrant administrative leave or discipline. Lawton returned to teaching at MLK. Talley agreed to remain on paid leave for the rest of the school year and El Hayek withdrew his antiharassment action.[3]

An outside investigation into Talley's HIB complaints concluded on May 12, 2016 that El Hayek neither harassed nor discriminated against Talley. Instead, it determined that many of Talley's complaints were "objectively reasonable acts of a principal." And the "hostile dynamic" between the two was attributable to "personality conflicts, misunderstandings, and poor communication."

In September 2018, Talley filed a complaint against SPS, alleging hostile work environment, disparate treatment, and disparate impact. She also alleged

[2] El Hayek later removed the "poor" rating.

[3] El Hayek was leaving Dunlap at the end of the school year when Todd returned as principal. SPS also agreed to remove the two letters of counseling from Talley's personnel file.

she suffered adverse employment consequences in retaliation for reporting El Hayek's race, age, and gender discrimination. Finally, Talley claimed both negligent and intentional infliction of emotional distress.

SPS moved for summary judgment dismissal. The trial court found that Talley "failed to establish specific and material facts to support each element of her prima facie case" and "failed to offer any substantial evidence to establish the existence of a genuine issue of material fact." The court granted summary judgment and dismissed Talley's claims.

Talley appeals.

ANALYSIS

Talley argues the trial court erred in dismissing her claims on summary judgment. We review orders on summary judgment de novo. Kim v. Lakeside Adult Family Home, 185 Wn.2d 532, 547, 374 P.3d 121 (2016). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998) (citing CR 56(c)). We consider the evidence and reasonable inferences from it in the light most favorable to the nonmoving party. Kim, 185 Wn.2d at 547.

To defeat summary judgment, the opposing party must set forth specific facts showing a genuine issue of material fact and may not rely on allegations or self-serving statements. Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Grp., Inc., 114 Wn. App. 151, 157, 52 P.3d 30 (2002). If the nonmoving party "fails to make a showing sufficient to establish the existence of an element

essential to his case," then the trial court should grant summary judgment. Atherton Condo. Apt.-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

Discrimination Claims

In her complaint, Talley raised several claims for discrimination based on age, race, and gender under Washington's Law Against Discrimination, chapter 49.60 RCW.[4] She alleged SPS "unlawfully and tortiously engaged in [a] severe and pervasive pattern of discriminatory practices" against her. Talley bears the burden of establishing a prima facie case of discrimination and "may rely on circumstantial, indirect, and inferential evidence to establish discriminatory action." Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas County, 189 Wn.2d 516, 526-27, 404 P.3d 464 (2017).

To overcome summary judgment on a discrimination claim, "a plaintiff needs to show only that a reasonable jury could find that the plaintiff's protected trait was a substantial factor motivating the employer's adverse actions." Scrivener v. Clark College, 181 Wn.2d 439, 445, 324 P.3d 541 (2014). To accomplish this, the employee "must do more than express an opinion or make conclusory statements. The employee has the burden of establishing specific and material facts to support each element of his or her prima facie case." Hiatt v. Walker Chevrolet Co., 120 Wn.2d 57, 66, 837 P.2d 618 (1992).[5] If the plaintiff fails to meet this burden, the defendant is entitled to judgment as a matter of law.

[4] "It is an unfair practice for any employer . . . [t]o discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, [or] national origin." RCW 49.60.180(3).

[5] Footnote omitted.

Kirby v. City of Tacoma, 124 Wn. App. 454, 464, 98 P.3d 827 (2004). Summary judgment "is seldom appropriate" in discrimination cases "because of the difficulty of proving a discriminatory motivation." Scrivener, 181 Wn.2d at 445.

A. Hostile Work Environment

Talley claims the trial court erred in dismissing her hostile work environment claim because she presented sufficient evidence to show that she was subject to a "toxic, unprofessional environment with respect to race, gender and/or age harassment." We disagree.

To establish a claim for hostile work environment, an employee must show that "the harassment (1) was unwelcome, (2) was because of a protected characteristic,[6] (3) affected the terms or conditions of employment, and (4) is imputable to the employer." Blackburn v. Dep't of Soc. & Health Servs., 186 Wn.2d 250, 260, 375 P.3d 1076 (2016). The harassment must be pervasive enough to "alter the conditions of employment and create an abusive working environment." Glasgow v. Ga.-Pac. Corp., 103 Wn.2d 401, 406, 693 P.2d 708 (1985). In assessing a claim for hostile work environment, we consider

> the frequency and severity of the discriminatory conduct; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. Casual, isolated or trivial manifestations of a discriminatory environment do not affect the terms or conditions of employment to a sufficiently significant degree to violate the law.

Washington v. Boeing Co., 105 Wn. App. 1, 10, 19 P.3d 1041 (2000).[7]

[6] The parties agree that Talley is a member of several protected classes.

[7] Footnote omitted.

Talley cites many examples of El Hayek's conduct that she claims amount to a hostile work environment. She says:

> (1) El Hayek talked down to her, (2) used a rude and disrespectful tone with her, (3) attacked her with false write[-]ups, (4) "required" her to call him on his cellphone or e[-]mail him when she was absent from work, (5) forbade her from using the school intercom without getting prior approval from him, moved his desk to oversee her every move, (6) El Hayek went around the building asking staff if they had problems with plaintiff and if so to write them up, (7) he went to other staff members and talked about Talley in a negative way, (8) he tried to find anything to attack her job performance, (9) threatened plaintiff that if she did not do what he has directed she would face progressive discipline, (10) told Evelyn Beeler that if he was a woman he could control plaintiff, (11) asked staff if they were afraid of plaintiff, (12) asked plaintiff on more than one occasion to "yell and cuss him out" if he does something she did not like and (13) falsely accused plaintiff of cussing.

Assuming Talley's allegations are true, she offers no evidence that any of El Hayek's actions or statements occurred because of her race, age, or gender. Rather, she argues that El Hayek implied discriminatory motivation. For example, Talley claims that El Hayek's accusation about "cussing" was racially motivated because "[w]hite people[8] in general think that's what black women do when they get upset." "They get crazy and start yelling and screaming and cussing." But Talley has the burden to produce specific and material facts to support her allegations. Her conclusory statements cannot establish a prima facie case for hostile work environment.

[8] While El Hayek is not Caucasian, Talley asserts that because he "grew up in a white family," he "thinks he's white, he thinks he's superior [to] a black" person.

B. Disparate Treatment

Talley also argues she satisfied her burden under the summary judgment standard to show that she experienced disparate treatment because of her race, age, and gender. We disagree.

A prima facie case of disparate treatment requires a showing that the plaintiff (1) is in a protected class, (2) suffered an adverse employment action, (3) was doing satisfactory work, and (4) was treated differently from someone not in the protected class. Kirby, 124 Wn. App. at 468. The adverse employment action must be "tangible," meaning " ' a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.' " Marin v. King County, 194 Wn. App. 795, 808, 378 P.3d 203 (2016) (quoting Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1998)). It must be "more than an 'inconvenience or alteration of job responsibilities.' " Kirby, 124 Wn. App. at 465 (quoting DeGuiseppe v. Vill. of Bellwood, 68 F.3d 187, 192 (7th Cir. 1995)). And the adverse employment action must occur "under circumstances that raise a reasonable inference of unlawful discrimination." Marin, 194 Wn. App. at 808. A hostile work environment may amount to an adverse employment action. Harrell v. Dep't of Soc. & Health Servs., 170 Wn. App. 386, 398, 285 P.3d 159 (2012).

If an employee establishes a prima facie case of disparate treatment, the burden shifts to the employer to show a legitimate, nondiscriminatory reason for the adverse employment action. Marin, 194 Wn. App. at 808. The burden then

shifts back to the employee to show that the employer's reasons for the adverse action are pretextual, meaning they "(1) have no basis in fact; (2) were not really motivating factors for the decision; or (3) were not motivating factors in employment decisions for other employees in the same circumstances." Kirby, 124 Wn. App. at 467.

Talley does not show that she suffered an adverse employment action. El Hayek issued Talley two letters of counseling. Letters of counseling explain something that an administrator believes the employee did incorrectly or could have done better and to improve communication. Talley testified that the letters themselves were not disciplinary or even "a formal reprimand," and she admits that she did not "receive any discipline" as a result of the letters.

It is true that SPS placed Talley on paid administrative leave after El Hayek reported the incident in the parking lot with her husband. But Talley does not provide meaningful legal analysis or cite authority supporting her contention that paid administrative leave may be an adverse employment action.[9] Nor, as noted above, does Talley establish a hostile work environment that might constitute an adverse employment action. Because Talley does not show a "tangible" adverse employment action, she fails to establish a prima facie case of disparate treatment. Marin, 194 Wn. App. at 808.

Even if Talley could establish an adverse employment action, the evidence does not support "a reasonable inference of unlawful discrimination." Marin, 194 Wn. App. at 808. Talley acknowledges that other African-American

[9] We decline to review inadequately briefed arguments. RAP 10.3(a)(6); Norcon Builders, LLC v. GMP Homes VG, LLC, 161 Wn. App 474, 486, 254 P.3d 835 (2011).

women over 40 years old who worked at Dunlap experienced much better treatment from El Hayek. And even Talley attributes their favored treatment to their ability to get along with El Hayek. Talley testified that "they all listened to him" and "did what he wanted [them] to do"; the "people who decided to listen to him or back him, everything was fine, they could do whatever they want in the school." The "people" to whom Talley referred consisted of a group of at least five female employees, including three African-American women over 60 and 70 years old.

And unlike those who had a good working relationship with El Hayek, Talley refused to cooperate with him and even sought to undermine him. According to Talley, El Hayek

> wanted to be the top person at the school. He didn't want anyone else to go to anyone but him. He wanted to be the leader.
>
> He wanted to be the person who controls everyone below them. He wanted to control me, and because he figured he couldn't, that's when he started harassing and trying to intimidate me.

Talley claims that El Hayek treated her poorly "[b]ecause as a black woman, I can't challenge him. A black woman isn't supposed to challenge him. A woman my age wasn't supposed to know more than him. I shouldn't have been able to tell him how to do his job." But the evidence does not support these conclusory statements and they cannot defeat summary judgment. See Hiatt, 120 Wn.2d at 66. The court properly dismissed Talley's disparate treatment claim on summary judgment.

C. Retaliation

Talley argues that SPS issued her two "reprimands" and placed her on paid administrative leave as retaliation for filing HIB and discrimination complaints with SPS. According to Talley, she "was a victim of extreme retaliation or other adverse employment actions that simply cannot be otherwise explained without the existence of retaliatory intent."

An employer may not retaliate against an employee for filing a discrimination claim against the employer. Milligan v. Thompson, 110 Wn. App. 628, 638, 42 P.3d 418 (2002). A prima facie case of retaliation requires Talley show that (1) she engaged in statutorily protected activity, (2) SPS took an adverse employment action against her, and (3) there is a causal link between her activity and SPS's adverse action. Francom v. Costco Wholesale Corp., 98 Wn. App. 845, 861-62, 991 P.2d 1182 (2000). Retaliation must be a "substantial factor" behind the adverse employment action. Allison v. Hous. Auth. of Seattle, 118 Wn.2d 79, 95, 821 P.2d 34 (1991). If Talley establishes a prima facie case for retaliation, the burden shifts to SPS to present evidence of a nonretaliatory reason for the adverse employment action. Milligan, 110 Wn. App. at 638. Talley must then counter with evidence that this reason is pretextual. Milligan, 110 Wn. App. at 638.

As discussed above, Talley has not established that the letters of counseling and administrative leave amount to adverse employment actions. None of these actions led to a change of employment status or discipline. Moreover, even if we considered administrative leave an adverse employment

action, Talley cannot prove a causal link between the filing of her complaints and imposition of the paid administrative leave, which stemmed from the incident in the parking lot. Talley admits that the newly appointed SPS assistant superintendent who placed her on leave "had no idea" about her discrimination and harassment complaints at the time.[10] Talley fails to show a prima facie case for retaliation.

Intentional Infliction of Emotional Distress

Talley claims intentional infliction of emotional distress because El Hayek's "campaign of harassment," including "false write[-]ups, false allegations against the subordinate employee's husband, and the litany of Mr. El Hayek's actions against [her,] went well beyond the norm, beyond 'the pale of human decency.' " She contends that "falsifying a story of violence against the plaintiff and her husband, getting her placed on administrative leave and then intimidating witnesses to support [El Hayek's] false claims is outrageous."[11]

A claim for intentional infliction of emotional distress requires proof of " '(1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) actual result to plaintiff of severe emotional distress.' " Trujillo v. Nw. Tr. Servs. Inc., 183 Wn.2d 820, 840, 355 P.3d 1100 (2015)[12] (quoting Lyons v. U.S. Bank Nat'l Ass'n, 181 Wn.2d 775, 792, 336 P.3d 1142 (2014)). Summary judgment is appropriate only if no " 'reasonable minds could differ on whether the

[10] The assistant superintendent's first day was February 1, 2016, one day before Talley filed her second HIB complaint against El Hayek that included discrimination allegations for the first time.

[11] " 'Outrage' and 'intentional infliction of emotional distress' are synonyms for the same tort." Kloepfel v. Bokor, 149 Wn.2d 193 n.1, 195, 66 P.3d 630 (2003).

[12] Internal quotation marks omitted.

conduct has been sufficiently extreme and outrageous to result in liability.' " Citoli v. City of Seattle, 115 Wn. App. 459, 495, 61 P.3d 1165 (2002) (quoting Spurrell v. Bloch, 40 Wn. App. 854, 862, 701 P.2d 529 (1985)).

Conduct sufficient to incur liability for intentional infliction of emotional distress must be so extreme and outrageous as to go beyond all possible bounds of decency. Kloepfel, 149 Wn.2d at 196. Mere insults, indignities, and annoyances do not rise to the level of outrageousness required for liability. Kloepfel, 149 Wn.2d at 196. The standard for intentional inflection of emotional distress is "very high (by which we mean that the conduct supporting the claim must be appalling low)." Robel v. Roundup Corp., 148 Wn.2d 35, 51, 59 P.3d 611 (2002). But the relationship between the parties is important when considering whether liability should be imposed. Robel, 148 Wn.2d at 52. " '[A]dded impetus' is given to an outrage claim '[w]hen one in a position of authority, actual or apparent, over another has allegedly made racial slurs and jokes and comments.' " Robel, 148 Wn.2d at 52[13] (quoting Contreras v. Crown Zellerbach Corp., 88 Wn.2d 735, 741, 565 P.2d 1173 (1977)).

In Robel, the plaintiff hurt her back at work. Robel, 148 Wn.2d at 40. After filing a workers' compensation claim, the plaintiff became the target of at least one supervisor and fellow employees. Two coworkers laughed at the plaintiff and " 'acted out a slip and fall,' as 'one of them yelled, "Oh, I hurt my back, L & I, L& I!" ' "[14] Robel, 148 Wn.2d at 40. They called the plaintiff a

[13] Second alteration in original.

[14] An injured worker files their claim for compensation with the Department of Labor and Industries (L&I).

" 'bitch' " and a " 'cunt.' " Robel, 148 Wn.2d at 40. They also told customers that the plaintiff was a liar. Several coworkers stared at her, gave her " 'dirty looks,' " and whispered about her out loud. Robel, 148 Wn.2d at 40. After the plaintiff received a two-week release from her doctor, a supervisor commented to other employees, " ' "Can you believe it, Linda's gonna sit on her big ass and get paid." ' " Robel, 148 Wn.2d at 41. Our Supreme Court concluded that the conduct in the plaintiff's workplace was "so vulgar" that "reasonable minds could find the complained-of conduct outrageous." Robel, 148 Wn.2d at 52, 54-55.

By contrast, in Dicomes v. State, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989), the plaintiff alleged her employer prepared a false report to embarrass, humiliate, and terminate her from her job. She argued that her discharge "constituted outrageous conduct because it allegedly showed her to be an incompetent and disloyal employee." Dicomes, 113 Wn.2d at 630. Our Supreme Court concluded that "[a]t worst, plaintiff's allegations amount to a showing of bad faith. And even if they rose to the level of malice, . . . no claim of outrage could be stated." Dicomes, 113 Wn.2d at 631.

Unlike the plaintiff in Robel, Talley's claimed insults, indignities, and annoyances resulting from the strife between her and El Hayek were not so vulgar as to rise to the level of outrageous behavior. See Kloepfel, 149 Wn.2d at 196. And as in Dicomes, Talley's claim that El Hayek's false allegations led to her administrative leave—even if they rose to the level of malice—do not support a claim of outrage.

Negligent Infliction of Emotional Distress

Talley also claims negligent infliction of emotional distress because El Hayek "expressed his discriminatory intent with knowledge that the harassment and retaliation was impacting the plaintiff's health and causing ill effects."

Negligent infliction of emotional distress is a tort requiring evidence of duty, breach, proximate cause, and injury. Bishop v. State, 77 Wn. App. 228, 233, 889 P.2d 959 (1995). A claim for negligent infliction of emotional distress can arise in the employment setting. Chea v. Men's Wearhouse, Inc., 85 Wn. App. 405, 412, 932 P.2d 1216 (1997). But courts have noted that "[t]he workplace is not stress free." Snyder v. Med. Serv. Corp. of E. Wash., 98 Wn. App. 315, 324, 988 P.2d 1023 (1999), aff'd, 145 Wn.2d 233, 35 P.3d 1158 (2001). As a result, "absent a statutory or public policy mandate, employers do not owe employees a duty to use reasonable care to avoid the inadvertent infliction of emotional distress when responding to workplace disputes." Bishop, 77 Wn. App. at 234-35. So to establish a prima facie claim of negligent infliction of emotional distress in the workplace, Talley must show

> (1) that her employer's negligent acts injured her, (2) the acts were not a workplace dispute or employee discipline, (3) the injury is not covered by the Industrial Insurance Act, [Title 51 RCW,] and (4) the dominant feature of the negligence claim was the emotional injury.

Snyder, 98 Wn. App. at 323.

Here, Talley and El Hayek had a contentious and dysfunctional working relationship. El Hayek wanted Talley to follow his directives as interim principal and Talley questioned his actions and decisions. Indeed, the record shows that from the very beginning of El Hayek's first day as interim principal, Talley actively

opposed El Hayek's instructions and worked with Todd and other Dunlap staff to undermine his authority. Talley has not shown that El Hayek's alleged acts amounted to more than a workplace dispute or efforts at employee management. The trial court did not err in dismissing Talley's negligent infliction of emotional distress claim.

Because Talley fails to produce specific and material facts sufficient to support her allegations of discrimination and emotional distress, we affirm the trial court's summary judgment dismissal of her claims.

Brennan, J.

WE CONCUR:

Chun, J.

Mann, C.J.