

[Cite as *Cortolillo v. ETech Ohio Comm. Resources*, 2015-Ohio-5655.]

ELIZABETH CORTOLILLO

Plaintiff

v.

ETECH OHIO COMMISSION
RESOURCES

Defendant

Case No. 2014-00267

Magistrate Anderson M. Renick

DECISION OF THE MAGISTRATE

{¶1} Plaintiff brought this action alleging discrimination based upon age, disability, gender, and denial of rights under the federal Family and Medical Leave Act (FMLA). The case proceeded to trial on the issues of liability and damages.

{¶2} In July 2007, plaintiff began working as the chief education officer at defendant eTech Ohio Commission Resources (eTech), now known as the Broadcast Educational Media Commission, and she was subsequently promoted to the position of deputy director. In 2009, plaintiff applied for the position of executive director; however, she was not selected and Kathleen Harkin was hired as the executive director in November 2009. Plaintiff alleges that soon after Harkin became executive director, she experienced age, gender, and disability discrimination and that Harkin retaliated against her for reporting the “hostile work environment.” According to plaintiff, her role as deputy director was reduced and Harkin isolated her from other staff before she terminated plaintiff’s employment on November 19, 2010.

{¶3} Plaintiff testified that she first met Harkin sometime after 1988 when they both worked at Columbus State Community College. Plaintiff stated that she had lunch with Harkin soon after she learned that Harkin had been hired as defendant’s executive director and that initially, “everything was fine” and she had no problems with Harkin

until approximately January 2010. As the deputy director, plaintiff assumed management duties when Harkin was not in the office.

{¶4} Plaintiff testified that her relationship with Harkin began to change after she spoke to Harkin about an altercation Harkin had with another employee and plaintiff believed that Harkin became upset because she had intervened. Soon thereafter, Harkin directed plaintiff to send an email directing all staff to report directly to Harkin, rather than through plaintiff. Plaintiff related that Harkin further instructed her not to meet with certain groups, including the broadcasting and technology groups. According to plaintiff, Harkin was not critical of her job performance at that time.

{¶5} Plaintiff was critical of Harkin's management style, including her conduct during leadership team meetings. Plaintiff testified that, during one meeting, Harkin yelled at her after plaintiff stated that Harkin had made an "inappropriate" hiring decision. Plaintiff explained that she kept a journal to document "harassing" behavior and in March, she arranged a meeting with Karen Doty, a member of the Ohio Board of Regents legal staff, at which time she submitted "comments and claims" concerning Harkin. Plaintiff was subsequently informed that the Board of Regents was going to conduct an internal investigation of eTech. According to plaintiff, no action was taken as a result of the investigation.

{¶6} Plaintiff testified that in April 2010 Harkin took the leadership team to lunch at the Columbus Athletic Club and apologized for the "rough" period the office had been through. After the meeting, the environment in the office improved, but soon became stressful again. Plaintiff related that sometime before June 2010, she had to leave a leadership team meeting to pick up her daughter and that she told those in attendance that she was leaving. Plaintiff testified that she later received a "write-up" from Harkin for leaving work early. Plaintiff testified that Harkin acted unprofessionally and did not provide her with sufficient direction. On September 23, 2010, the human resources director for the Ohio Board of Regents requested a mediator to address complaints that

plaintiff had made, and plaintiff testified that she spoke to a mediator; however, no resolution resulted from mediation. Plaintiff explained that she did not see “eye to eye” with Harkin regarding management style and policy.

{¶7} Plaintiff testified that the stress at work caused her health to deteriorate. In January 2010, she began to experience migraine headaches and high blood pressure. Plaintiff sought treatment from her physician and she filed for FMLA certification, fearing that she may develop a disability. Plaintiff testified that Harkin signed the FMLA certification and that she received a copy of the certification. Plaintiff further testified that there were “no issues” regarding her application for FMLA leave.

{¶8} According to plaintiff, office morale was low in June through August 2010. In September 2010, one of the commission members was concerned that rural areas were not being served well. Plaintiff helped develop a plan of action to address that concern, but Harkin believed the plan was not appropriate. Plaintiff testified that upon learning of the program Harkin entered the meeting room, and expressed her displeasure with the program in unprofessional terms. Plaintiff stated that Harkin apologized to her soon after making the statement.

{¶9} Plaintiff helped prepare a request for proposal (RFP) in early November 2010 that was reviewed by other members of the leadership team before plaintiff directed it to be posted on the internet. Soon after the RFP was uploaded, defendant’s employees discovered that a pricing table had not been included with the posted material. Plaintiff testified that Harkin became upset about both the incomplete post and the inclusion of the agency’s phone number and that she gave plaintiff a written reprimand for the errors. Plaintiff was also instructed to compile a list of projects she was working on. According to plaintiff, after the RFP was released, she had little interaction with Harkin. Plaintiff testified that she experienced a migraine headache as a result of the incident and she requested two days of sick leave which she coded in the office computer system as an FMLA leave request. Plaintiff stated that after she

returned to work on November 19, 2010, she was notified that her position had been terminated.

{¶10} Harkin testified that one of her primary duties was supervising the members of the leadership team. Harkin stated that when she became the executive director, eTech staff was in “disarray” due to a 30 percent budget cut that had resulted in the loss of experienced staff members. Harkin explained that members of the leadership team reported directly to her and that other staff reported to their respective team leaders. Harkin described her management style as “hands-off,” but she emphasized that she made staff aware of her expectations. Harkin testified that she had learned from a member of the leadership team that plaintiff had directed the other members to report to her, rather than reporting directly to Harkin; a process which Harkin had specifically rejected in an earlier discussion with plaintiff.

{¶11} Harkin admitted that she had used “the F word” in front of plaintiff and other employees on at least one occasion and that plaintiff had discussed that conduct with human resources personnel. Harkin explained that she may have directed plaintiff to miss one particular meeting, but the characterization that she restricted plaintiff from participating in meetings in general was inaccurate. Harkin denied plaintiff's allegation that she had “verbally attacked” plaintiff during a budget meeting.

{¶12} Harkin recalled having a meeting with Karen Doty and Drew White, representatives from the Ohio Board of Regents, which occurred soon before the lunch with the leadership team where Harkin had apologized for the stressful environment at the office. Harkin learned that plaintiff had talked to Doty and White about problems she perceived with Harkin's management style. Harkin explained that she was “driving the ball” to deliver a five-year plan in an office that had been “jittery” after budget and personnel cuts. Harkin characterized her management style as “entrepreneurial” and less restrictive than the previous administration. According to Harkin, employees reacted differently to the organizational change; some thrived and others were unhappy.

Harkin testified that it was very clear that plaintiff had a problem with her management style, but that she did not have a problem with plaintiff or anyone else who “delivered” and performed their duties.

{¶13} Harkin recalled that plaintiff was responsible for an RFP review and had disregarded explicit direction regarding the inclusion of non-urban areas and that plaintiff was “flippant” in responding to her when she expressed concern. Harkin stated that she also became concerned when plaintiff began leaving the office without informing her, a problem that was particularly concerning to Harkin because plaintiff was a department leader. Harkin testified that she had verbally admonished plaintiff several times before issuing a written reprimand to her for leaving without notice. Harkin agreed that her relationship with plaintiff deteriorated over time, a change she attributed to plaintiff's decreasing performance.

{¶14} Matthew Howard testified that he had worked with plaintiff as the Chief Information Officer at eTech from 2007 until plaintiff left the agency in 2012. Howard recalled that he worked on preparing RFPs with plaintiff and he described her as pleasant to work with. According to Howard, initially, plaintiff and Harkin worked well together, but later he observed “significant tension” between them. Howard noted that there was similar tension between Harkin and Scott Gaughn. Howard described the April lunch at the Athletic Club as an uncomfortable experience. Howard recalled a meeting during which the leadership team was “yelled at collectively.”

{¶15} Mary Nicholson was the Director of Operation for eTech and during the period in question she was a member of the leadership team. Nicholson testified that she noticed a change in the workplace atmosphere after Harkin became director; there was less comradery and increasing stress on everyone in the office due to Harkin's high expectations. Nicholson related that just prior to the April lunch at the Athletic Club, the leadership team had called for an investigation by the Ohio Board of Regents regarding

the stressful workplace environment at eTech. Nicholson testified that Harkin attempted to “make it right” with the leadership members during the lunch.

{¶16} Nicholson testified that she was in charge of human resources where she supervised the staff who processed FMLA requests. According to Nicholson, Harkin at one time stated that she did not recall signing plaintiff's FMLA paperwork, but Nicholson testified that Harkin had signed the papers and it was well known that plaintiff had submitted the request.

{¶17} Nicholson testified that by sometime in 2010, the policy for leaving the office early became more restrictive and eventually staff members were required to tell Harkin before they left. Nicholson stated that it was not common for staff members to be written-up for leaving early. Nicholson identified two memos that plaintiff sent to Harkin on November 12, 2015, in response to the written reprimands she had received for errors in the RFP and taking leave without notice. (Plaintiff's Exhibits 3 and 4.) Nicholson testified that Harkin was upset that plaintiff would leave the office when projects needed to be completed. According to Nicholson, Harkin eventually took over some of the leadership responsibilities that plaintiff had previously performed.

DISCRIMINATION

{¶18} Chapter 4112 of the Ohio Revised Code prohibits age, sex, and disability discrimination in employment. See R.C. 4112.14(A) (age discrimination) and R.C. 4112.02(A) (sex, age and disability discrimination). The burden of proof framework that applies to federal Title VII employment discrimination cases, set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), also applies to Chapter 4112 discrimination cases. See *Mauzy v. Kelly Services, Inc.*, 75 Ohio St.3d 578, 582, 1996-Ohio-265 (1996). Plaintiff must first prove, by a preponderance of the evidence, a prima facie case of discrimination. If the plaintiff does so, the burden shifts to the defendant “to articulate some legitimate, nondiscriminatory reason for the employee's rejection.”

McDonnell Douglas, supra, at 802. If the defendant satisfies its burden, the plaintiff must then prove, by a preponderance of the evidence, that the defendant's reason was merely "a pretext for discrimination." *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 252-253 (1981), citing *Id.* at 804. Still, "[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." *Id.* at 253.

AGE DISCRIMINATION

{¶19} To establish a prima facie case of age discrimination, where no direct evidence is available, plaintiff must demonstrate that: 1) she was a member of a protected class, 2) she suffered an adverse employment action, 3) she was qualified for the position, and 4) was replaced by, or the discharge permitted the retention of, a person of substantially younger age. *Coryell v. Bank One Trust Co. N.A.*, 101 Ohio St.3d 175, 2004-Ohio-723 at paragraph one of the syllabus; *Knepper v. Ohio State Univ.*, 2011-Ohio-6054, ¶ 10-11 (10th Dist.).

{¶20} With regard to her age discrimination claim, plaintiff states in her post-trial brief that Harkin's treatment of her "resulted from her [plaintiff's] status as a younger woman." (Plaintiff's post-trial brief, page 2.) However, younger employees are not protected by anti-discrimination laws. The Supreme Court of Ohio has stated that the federal case law interpreting the Age Discrimination in Employment Act of 1967 (ADEA) is instructive in interpreting Ohio's state statutes against age discrimination. *Coryell, supra*, at ¶ 15; *Thomas v. Columbia Sussex Corp.*, 10th Dist. No. 10AP-93, 2011-Ohio-17, ¶ 26. The ADEA forbids discriminatory preference for the young over the old; however, it does not also prohibit favoring the old over the young. *Gen. Dynamics Land Sys. v. Cline*, 540 U.S. 581, 584 (2004); *Carroll v. Gates*, 2010 U.S. Dist. LEXIS 118539 (S.D. Ohio Nov. 8, 2010). Furthermore, plaintiff did not prove that she was replaced by

a person of substantially younger age. Accordingly, plaintiff cannot prevail on her age discrimination claim.

GENDER DISCRIMINATION

{¶21} With regard to her claim of gender discrimination, plaintiff alleges that she was “discriminated against, which resulted in a hostile work place environment” and the termination of her employment. (Plaintiff's post-trial brief, page 2.) Plaintiff contends that Harkin's reason for terminating her employment “is entirely due to the fact that she was a woman” and that Cortolillo was unable to meet Harkin's standards as “a direct result of her being female.” (Plaintiff's post-trial brief, pages 2-3.)

{¶22} In the absence of direct evidence of discrimination, plaintiff may raise an inference of discriminatory intent by establishing that: 1) she was a member of a protected class; 2) she suffered an adverse employment action; 3) she was qualified for the position held; and 4) comparable, nonprotected persons were treated more favorably. *DeGarmo v. Worthington City Schs. Bd. of Educ.*, 10th Dist. Franklin No. 12AP-961, 2013-Ohio-2518, ¶ 13.

{¶23} As support for her gender discrimination claim, plaintiff relies on Nicholson's testimony that “the women on the team had to push harder” to meet Harkin's expectations. However, the evidence showed that Harkin was equally demanding of both men and women on the leadership team and that Harkin's arguably unprofessional comments were directed at the entire leadership team, including Howard and Scott Gaughn. The court finds that Harkin's testimony regarding her interaction with the leadership team was credible. Specifically, the court finds that Harkin was focused on the agency's performance, and that her goals for the agency were reasonable given the challenging budgetary and political environment. There is no doubt that Harkin had high expectations of her staff and that Harkin became upset when plaintiff, or other staff members, failed to follow her explicit direction. Plaintiff admitted

that she failed to inform Harkin she was leaving work early during a critical time period. Plaintiff did not present any credible evidence to show that Harkin's decision to terminate her at-will employment was actually motivated by discriminatory animus.

DISABILITY DISCRIMINATION

{¶24} "In order to establish a prima facie case of disability discrimination, the person seeking relief must demonstrate that: (1) she was disabled, (2) an adverse employment action was taken by an employer, at least in part, because the individual was disabled, and (3) the person, though disabled, can safely and substantially perform the essential functions of the job in question." *Ressler v. AG*, 10th Dist. Franklin No. 14AP-519, 2015-Ohio-777, ¶ 16.

{¶25} With regard to plaintiff's alleged disability, plaintiff relates that she has been diagnosed with migraine headaches and irritable bowel syndrome.

{¶26} Federal and state disability discrimination claims, whether brought under the Americans with Disabilities Act, 42 U.S.C. 12112 et seq. (ADA) or Ohio's anti-discrimination statute, R.C. 4112, are subject to the same evidentiary standards and may be evaluated concurrently. *Jakubowski v. Christ Hosp., Inc.*, 627 F.3d 195, 201 (6th Cir. 2010). In order to establish a claim for disability discrimination, the plaintiff must first establish that she is "disabled" within the meaning of the ADA. *McKay v. Toyota Motor Mfg., U.S.A., Inc.*, 110 F.3d 369, 371 (6th Cir. 1997). The Americans With Disabilities Act Amendments Act of 2008 (ADAAA) applies in cases where the alleged discriminatory acts occurred after January 1, 2009. *Milholland v. Sumner County Bd. of Educ.*, 569 F.3d 562, 566-67 (6th Cir. 2009).

{¶27} Under the ADAAA, "disability" means:

{¶28} "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

{¶29} "(B) a record of such an impairment; or

{¶30} “(C) being regarded as having such an impairment (as described in paragraph (3)).” 42 U.S.C. 12102(1).

{¶31} The court notes that plaintiff did not address her disability discrimination claim in her post trial brief. Although plaintiff testified that she occasionally developed migraine headaches as a result of workplace stress, she did not present sufficient evidence to show that her alleged disabilities substantially interfered with her major life activities.

{¶32} Furthermore, plaintiff failed to prove that her employment was terminated, at least in part, because her alleged disability. Plaintiff testified that she believed her medical condition in some way “played into” Harkin’s decision, but she also admitted that she did not know whether the decision to terminate her employment was the result of her alleged disability. Harkin testified credibly that she did not know plaintiff suffered from migraine headaches and that she did not ask plaintiff about her reasons for using sick leave. Accordingly, the court finds that plaintiff failed to establish a prima facie case of disability discrimination.

RETALIATION

{¶33} Plaintiff also alleges retaliation under R.C. 4112.02(I).¹ R.C. 4112.02(I) provides that it is an unlawful discriminatory practice “[f]or any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.” Plaintiff may prove a retaliation claim through either direct or circumstantial evidence

¹The court notes that plaintiff’s amended complaint does not allege retaliation pursuant to R.C. 4112.02(I) and that plaintiff raised that claim in her post-trial brief. During the trial, the court allowed plaintiff to amend the pleadings to conform to the evidence regarding retaliation related to both exercising her rights under the FMLA and disability discrimination.

that unlawful retaliation motivated defendant's adverse employment decision. *Reid v. Plainsboro Partners, III*, 10th Dist. Franklin No. 09AP-442, 2010-Ohio-4373, ¶ 55.

{¶34} “To establish a prima facie case of retaliation under R.C. 4112.02(I), plaintiff had to establish the following: (1) she engaged in protected activity; (2) [defendant] knew of her participation in protected activity; (3) [defendant] engaged in retaliatory conduct; and (4) a causal link exists between the protected activity and the adverse action.” *Nebozuk v. Abercrombie & Fitch Co.*, 10th Dist. Franklin No. 13AP-591, 2014-Ohio-1600, ¶ 40. “The establishment of a prima facie case creates a presumption that the employer unlawfully retaliated against the plaintiff.” *Id.*

{¶35} If plaintiff establishes a prima facie case, the burden of production shifts to defendant to “articulate some legitimate, nondiscriminatory reason for [its action].” *McDonnell Douglas, supra*, at 802. If defendant succeeds in doing so, then the burden shifts back to plaintiff to demonstrate that defendant's proffered reason was not the true reason for the employment decision. *Id.*

{¶36} Although plaintiff contends that there were no “reports of dissatisfaction with her job performance” prior to complaining of a stressful work environment to the Ohio Board of Regents, there is no credible evidence to suggest that plaintiff reported any allegation of age, gender, or disability discrimination to the Board of Regents, or made any other report of discrimination. Therefore, the court finds that plaintiff did not establish that she had opposed any unlawful discriminatory practice.

{¶37} With regard to establishing a causal link between the protected activity and the adverse action, the court may look to the temporal proximity between the adverse action and the protected activity to determine whether there is a causal connection. *Harrison v. Metro Govt. of Nashville & Davidson Cty., Tenn.*, 80 F.3d 1107, 1118-1119 (6th Cir. 1996). “The cases that accept mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action as sufficient evidence of causality to establish a prima facie case uniformly hold that the

temporal proximity must be very close.” *Id.*, quoting *Clark Cty. School Dist. v. Breedon*, 532 U.S. 268, 273 (2001). The Sixth Circuit Court of Appeals has held that closeness in time is only one indicator of a causal connection and that temporal proximity, standing alone, is not enough to establish a causal connection for a retaliation claim. *Spengler v. Worthington Cylinders*, 615 F.3d 481, 494 (6th Cir. 2010); *Skrjanc v. Great Lakes Power Serv. Co.*, 272 F.3d 309, 317 (6th Cir. 2001). However, when combined with other evidence of retaliatory conduct, temporal proximity is enough to establish a causal connection. *Id.*

{¶38} In this case, plaintiff testified that she complained to the Board of Regents sometime in early 2010, before the April lunch where Harkin apologized to the leadership team. Plaintiff did not receive a written reprimand until November 2010 and she was notified that her employment was being terminated on November 19, 2010. Therefore, the court finds that plaintiff failed to establish a causal link exists between her report to the Board of Regents and the termination of her employment. Accordingly, the court finds that plaintiff failed to establish a prima facie case of retaliation under R.C. 4112.02(I).

{¶39} Furthermore, based upon the testimony and evidence presented, the court finds that defendant clearly established legitimate, nondiscriminatory reasons for terminating plaintiff’s at-will employment. As a department leader, plaintiff was required to work closely with Harkin and plaintiff admitted that she did not support Harkin’s management style, nor did she agree with certain policy decisions. Harkin testified that plaintiff clearly had a problem with her management style and she related that that plaintiff’s performance had decreased over time, resulting in both verbal and written reprimands. Harkin terminated plaintiff after she left the office during an important project without informing Harkin. Plaintiff has not presented any credible evidence to demonstrate that defendant’s stated reason for her termination was a pretext for discrimination.

FMLA

{¶40} Plaintiff also claims that defendant terminated her employment in retaliation for her asserting her rights under the federal Family and Medical Leave Act (FMLA). The FMLA prohibits employers from discriminating against employees for exercising their rights under the Act. Section 2615(a)(2). Basing an adverse employment action on an employee's use of leave or retaliation for exercise of FMLA rights is therefore actionable. *Skrjanc, supra*. An employee can prove FMLA retaliation circumstantially, using the method of proof established in *McDonnell, supra*.

{¶41} "To establish a prima facie case of FMLA retaliation circumstantially, a plaintiff must show that: (1) she exercised rights afforded by FMLA, (2) she suffered an adverse employment action, and (3) there was a causal connection between her exercise of rights and the adverse employment action." *Ressler, supra*, at ¶ 14.

{¶42} Although plaintiff did not present any FMLA documentation and Harkin testified that she did not sign plaintiff's FMLA certification, Nicholson testified that Harkin did sign plaintiff's FMLA documents. Harkin admitted that she may have signed those documents but she was not aware that plaintiff had applied for FMLA.

{¶43} Even assuming that plaintiff exercised her rights under the FMLA, the court finds that plaintiff failed to establish a causal connection between the exercise of her rights and the termination of her employment. The court finds that Harkin's testimony that she did not recall plaintiff's application for FMLA certification was credible. Harkin testified that she always approved plaintiff's leave requests and that she believed employees' family matters were a priority. Harkin was not aware that plaintiff had physical ailments including migraine headaches. Furthermore, there is insufficient evidence to show that plaintiff either actually used or attempted to use FMLA leave. Plaintiff testified that defendant's policy required an employee to use all available leave,

including sick and disability leave, before using unpaid FMLA leave and that she never had to resort to using unpaid FMLA leave.

{¶44} Moreover, as described above, Harkin had legitimate, nondiscriminatory reasons for her decision to terminate plaintiff's employment.

HOSTILE WORK ENVIRONMENT

{¶45} Plaintiff contends that Harkin subjected her to a hostile work environment. “A prima facie case of hostile work environment is established by showing that the employee (1) was a member of a protected class, (2) was subjected to unwelcome harassment because of [her protected status], (3) that had the effect of unreasonably interfering with the employee's work performance and creating an objectively intimidating, hostile or offensive work environment.” *Hoyt v. Nationwide Mut. Ins. Co.*, 10th Dist. Franklin No. 04AP-941, 2005-Ohio-6367, ¶ 68, citing *Surry v. Cuyahoga Community College*, 149 Ohio App.3d 528, 2002 Ohio 5356, at ¶ 37.

{¶46} “Not all workplace conduct that can be construed as offensive can be characterized as harassment forbidden by statute.” *Surry, supra*, ¶ 38-43, citing *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 66-67 (1986). “Conduct that is merely offensive is not actionable as hostile work environment.” *Hoyt, supra*, citing *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993). In order to determine whether the working environment was sufficiently hostile, the trier of fact must consider all of the circumstances, including: “(1) the frequency of the discriminatory conduct; (2) its severity; (3) whether it is physically threatening or humiliating, or a mere offensive utterance; and (4) whether it unreasonably interferes with the employee's work performance.” *Smith v. Superior Prod., LLC*, 10th Dist. Franklin No. 13AP-690, 2014-Ohio-1961, ¶ 48. The alleged conduct must be severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive. *Id.*

{¶47} During cross examination, plaintiff admitted that she did not believe Harkin's unprofessional comments were a threat of violence. Based upon the evidence, the court finds that Harkin's conduct was not severe, physically threatening or humiliating, and her high expectations did not unreasonably interfere with plaintiff's work performance.

{¶48} For the foregoing reasons, the court finds that plaintiff has failed to prove by a preponderance of the evidence any of her claims. Accordingly, judgment is recommended in favor of defendant.

{¶49} A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

ANDERSON M. RENICK
Magistrate

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DECISION

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