[Cite as *Brown v. Corr. Reception Ctr.*, 2019-Ohio-1067.]

ALICIA BROWN Plaintiff v. CORRECTIONAL RECEPTION CENTER Defendant	Case No. 2018-00021JD Judge Patrick M. McGrath Magistrate Holly True Shaver DECISION

{¶1} On November 5, 2018, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On November 29, 2018, plaintiff filed a response in opposition. On December 5, 2018, defendant filed a reply and a motion for leave to file the same, which is GRANTED. The motion for summary judgment is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." *See also Gilbert v. Summit Cty.,* 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317 (1977).

{¶4} In her complaint, plaintiff alleges race discrimination and retaliation in violation of R.C. Chapter 4112. Specifically, regarding her discrimination claim, plaintiff

asserts that defendant treated similarly-situated Caucasian coworkers better than it treated her, and/or that she was replaced by someone outside the protected class. Regarding her retaliation claim, plaintiff alleges that she engaged in a protected activity when she reported that one of her supervisors, Tony Ayers, had threatened her and pressured her to lie in an investigation related to another employee who was pursuing Title VII issues, and that Ayers terminated her employment because of her continued participation in protected activity.

Facts

{¶5} In 2014, plaintiff began her employment at ATC Healthcare Services (ATC), an employment agency in Columbus, Ohio. ATC placed plaintiff in a Health Information Technician (HIT) position at defendant's Correctional Reception Center (CRC), in Orient, Ohio. Plaintiff's duties in the intake area of CRC included scheduling appointments for doctors and nurses to examine inmates upon their arrival to CRC. Plaintiff's supervisors at CRC were Raphael Lilly, Tony Ayers, and Robert Swackhammer. Both plaintiff and Lilly are African American. Both Ayers and Swackhammer are Caucasian.

{¶6} In October 2016, Ayers conducted an investigation of Lilly after Jackie Lipp, a Caucasian HIT who worked in the Med Bay section of CRC, accused Lilly of speaking to her aggressively after she failed to answer his telephone calls. Plaintiff alleges in her complaint that on October 14, 2016, she filed an incident report stating that she had witnessed retaliatory and discriminatory behavior by Ayers during the investigation. Plaintiff testified via deposition that another African American HIT, Margaretta Wright, told her that she felt pressured by Ayers to write an incident report regarding Lilly, and that Wright expressed to plaintiff that Ayers threatened that if she did not write a statement in support of his position regarding Lilly's conduct, Wright's employment would be terminated. Plaintiff testified that she told Wright to report Ayers' conduct to George Frederick, the Deputy Warden of Operations. When plaintiff discussed with Lilly

what Wright had told her, Lilly instructed plaintiff to file her own incident report. Plaintiff testified that she gave her incident report to Lilly and Frederick but did not tell Ayers about it. Plaintiff also testified that she was not interviewed regarding the Lilly investigation.

{¶7} Plaintiff wrote another incident report on November 21, 2016. According to plaintiff, Ayers had authorized her to use Nurse Keith Reynolds' ECW password to log into the computer system.[1] Reynolds testified via deposition that Ayers had told him to let plaintiff use his password. Plaintiff wrote an incident report stating that she had permission to use Reynolds' password. Plaintiff testified that she gave the incident report to Frederick but did not confront Ayers about it. Neither plaintiff nor Reynolds were disciplined.

{¶8} In her complaint, plaintiff asserts that on January 26, 2017, she received a "harassing email" from Ayers. In its answer, defendant admits that two emails were sent to plaintiff on that date regarding her work at CRC. (Answer, ¶ 14.) It is undisputed that on that date, Ayers approached plaintiff and Nurse Kristy Gerber, a Caucasian, and told them that staff had reported to him that the two of them had been overheard "dropping f-bombs," and he told them to clean up their language. According to Ayers, Gerber stated that she would comply. Plaintiff testified that she explained to Ayers that she had not used profanity at work. Ayers responded by stating that he did not care, that he was letting them both know to stop, and that if they did not like it, they could leave. After Ayers spoke to Gerber and plaintiff, he walked away. Plaintiff then asked if she could speak to Ayers privately. Ayers and plaintiff had a conversation in Ayers' office. Plaintiff accused Ayers of "nit-picking" her work and being a racist. Plaintiff testified that in response, Ayers told her to "get out"; stated that she did not know what she was doing; and threatened that he would tell the Director how she had been acting. Plaintiff left Ayers' office, collected her belongings and stated loudly that it

[1]"ECW" is an abbreviation for the electronic medical record system at CRC.

seemed like Ayers was "getting rid of all of the black people." Plaintiff left the institution prior to the end of her shift. Ayers and Gerber both wrote incident reports about plaintiff's departure. Plaintiff also wrote an incident report and testified that she submitted it to Frederick. Plaintiff testified that she did not file any formal complaint or charge with the EEOC before her employment ended. Gerber testified that in her incident report, she wrote that she heard plaintiff yell that "it seems like all you're trying to do around here is fire black people or get black people in trouble." (Gerber deposition, p. 10.)

{¶9} Plaintiff called ATC from the parking lot of the institution and left a message for employee Tiffany Wolf. Later that afternoon, plaintiff sent an email to Wolf. (Exhibit A to Wolf's deposition.) Plaintiff's email corroborates Ayers' testimony that he had a discussion with plaintiff and Gerber about complaints that he had received about them having used profanity in the workplace. The email also corroborates that plaintiff asked to speak to Ayers alone. According to plaintiff's email, plaintiff asked Ayers why he was "nitpicking" her about her work; that she felt it was because of Ayers' poor relationship with Lilly; and she stated that Ayers had been harassing her since she wrote a report pertaining to the Lilly investigation. Plaintiff also stated in the email, "So I said I wrote a report on you of workplace harassment and I planned on leaving today anyway because your [sic] not going to continue harassing me anymore [,] then he started yelling with all the inmates in the hallway get your stuff and get out now[,] your [sic] no longer needed here[,] I said you are very unprofessional and you don't like black people working up in Medway [sic] and everyone black here just leave or you get rid of them and then he also stated that's why Mr. Lilly got fined with 2 days and I did not get anything out of that now. He then said I am going to report you to the Deputy Warden. * * * I spoke with Deputy Warden of Ops Fredricks about Mr. Ayers harassing me 2 weeks ago and he told me to write a report so I did this morning at 9:42 am. I have that report in a[n] incident report I gave it to him today." (*Id.*)

{¶10} Julie Seese, the office manager at ATC, testified via deposition that she provided a letter, dated March 22, 2017, to plaintiff at plaintiff's request which included the dates of plaintiff's employment at ATC, from 12-22-2014 through 1-26-2017, and stated in the letter that: Ms. Brown ended her assignment voluntarily." (Seese Deposition, pp. 20-21, Exhibit A.) Seese testified that plaintiff requested the letter and asked her to include the reason that she was no longer working, that reason being that "she ended her assignment; she did not report back to work." (Seese deposition, p. 22.)

{¶11} Plaintiff alleges that Ayers retaliated against her because she had filed incident reports during her assignment at CRC regarding Ayers' conduct, and that Ayers ultimately terminated her employment at CRC on January 26, 2017, after plaintiff accused him of being a racist. Defendant argues in its motion that it is entitled to summary judgment because plaintiff was employed by an independent contractor, ATC Healthcare, not DRC; thus, she cannot state a claim of employment discrimination against defendant.[2] Alternatively, defendant asserts that even if DRC were considered plaintiff's employer, she has failed to set forth a prima facie claim of either race discrimination or retaliation.

Law and Analysis

I. Whether CRC qualifies as plaintiff's "employer" under R.C. Chapter 4112

{¶12} R.C. 4112.01(A)(2) defines employer as: "the state, any political subdivision of the state, any person employing four or more persons within the state, and any person acting directly or indirectly in the interest of an employer." R.C. 4112.01(A)(3) defines employee as "an individual employed by any employer * * *."

{¶13} In Ohio, "federal case law interpreting Title VII of the Civil Rights Act of 1964, Section 2000(e) et seq., Title 42, U.S.Code, is generally applicable to cases involving alleged violations of R.C. Chapter 4112." *Little Forest Med. Ctr. v. Ohio Civil*

[2]"DRC" and "CRC" shall be used interchangeably throughout this decision.

Rights Comm., 61 Ohio St.3d 607, 609-610 (1991). The Sixth Circuit Court of Appeals has applied the joint-employer theory to determine whether an entity could be liable under Title VII. *See, e.g.*, *EEOC v. Skanska USA Bldg., Inc*., 550 Fed. Appx. 253 (6th Cir.2013). In *Skanska*, the court relied on the following factors to determine whether an entity was a joint employer: who can hire, fire, or discipline employees; who controls the employee's compensation and benefits, and who directs and supervises the employee's performance. *Id.*, citing *Carrier Corp. v. NLRB*, 768 F.2d 778, 771 (6th Cir. 1985).

{¶14} In addition, plaintiff points to *Perron v. Hood Industries*, 6th Cir. No. L-06-1396, 2007-Ohio-4478, to support her claim that defendant was her employer. In *Perron*, the court noted that in determining whether an entity that hires workers through an outside agency qualifies as an "employer" under R.C. 4112, the Supreme Court of Ohio has considered whether the employer has reserved the right to control the manner or means of doing the work. *Id.,* ¶ 29, citing *Gillum v. Indus. Comm*., 141 Ohio St. 373 (1943); *Bostic v. Connor*, 37 Ohio St.3d 144 (1988). For example, "if the employer reserves the right to control the manner or means of doing the work, the relation created is that of master and servant, while if the manner or means of doing the work or job is left to one who is responsible to the employer only for the result, an independent contractor relationship is thereby created." *Id.*, citing *Gillum, supra*, at paragraph two of the syllabus. Factors to consider in determining who has the right to control include: "who controls the details and quality of the work; who controls the hours worked; who selects the materials, tools and personnel used; who selects the routes traveled; the length of employment; the type of business; the method of payment; and any pertinent agreements or contracts." *Bostic, supra*, at 146.

{¶15} Julie Seese testified via deposition that when an individual applies to ATC and has met all eligibility requirements, the applicant becomes an eligible candidate available for DRC to select. (Seese deposition, p. 36.) Seese also testified that DRC can determine whether to end an individual's staffing assignment after that individual

has worked in a DRC facility. (*Id.*) Seese identified an employee handbook from ATC, which states that employees of ATC are to turn in timesheets to ATC, and that they are eligible for benefits through ATC. (Exhibit B). The employee handbook also states that ATC employees are paid by ATC; that ATC sends employees their tax forms; and that ATC employees are independent contractors. (*Id.*) Although Lilly testified that CRC did not conduct formal employment evaluations of HITs, Lilly testified that he, Ayers, and Swackhammer have made the collective decision to terminate the employment relationship with certain HITs in the past. Lilly testified specifically about two HITs who had been terminated: one had engaged in an inappropriate relationship with an inmate, and another had attendance problems. (Lilly deposition, pgs. 10-14.)

{¶16} Page 7 of ATC's handbook states: "ATC will market and seek to secure per-diem or contract work assignments and assign qualified Healthcare Associates to fill such assignments. * * * In the event a Healthcare Associate does not exhibit acceptable job performance or conduct in a job assignment, a determination may be made not to utilize the Healthcare Associate in future assignments. Disclosure of the reason for any such decision is at the sole discretion of the client and without the express permission of the client, no statement of reason will be available from ATC or the client. If a Healthcare Associate has concerns regarding a client facility, he/she should bring them to ATC's attention and allow the Company to investigate the matter."

{¶17} Plaintiff testified via deposition that her regular work schedule at CRC was 7 a.m. to 3 p.m., and that schedule was set by CRC. Plaintiff also testified that if she wanted to work overtime, she would request that through her supervisors at CRC, not through ATC. Plaintiff testified that Lilly, Ayers, and Swackhammer supervised her in her day-to-day work at CRC.

{¶18} Construing the evidence most strongly in plaintiff's favor, reasonable minds could conclude that CRC retained a degree of control over the manner and means of plaintiff's work to be subject to joint employer liability under R.C. Chapter 4112.

Therefore, assuming, arguendo, that defendant was plaintiff's employer as that term is used in R.C. Chapter 4112, the court shall turn to whether plaintiff has set forth a prima facie case of race discrimination and retaliation.

II. Race Discrimination

{¶19} R.C. 4112.02 provides, in pertinent part, that: "It shall be an unlawful discriminatory practice: (A) For any employer, because of the race * * * of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any other matter directly or indirectly related to employment." "'To prevail in an employment discrimination case, a plaintiff must prove discriminatory intent' and may establish such intent through either direct or indirect methods of proof." *Dautartas v. Abbott Labs.,* 10th Dist. Franklin No. 11AP-706, 2012-Ohio-1709, ¶ 25, quoting *Ricker v. John Deere Ins.* Co., 133 Ohio App.3d 759, 766 (10th Dist.1998). In this case, plaintiff seeks to establish discriminatory intent through the indirect method, which is subject to the burden shifting analysis established in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973). *See Nist v. Nexeo Solutions, LLC,* 10th Dist. Franklin No. 14AP-854, 2015-Ohio-3363, ¶ 31. "Under McDonnell Douglas, a plaintiff must first present evidence from which a reasonable [trier of fact] could conclude that there exists a prima facie case of discrimination." *Turner v. Shahed Ents.,* 10th Dist. Franklin No. 10AP-892, 2011-Ohio-4654, ¶11-12.

{¶20} "In order to establish a prima facie case, a plaintiff must demonstrate that he or she: (1) was a member of the statutorily protected class, (2) suffered an adverse employment action, (3) was qualified for the position, and (4) was replaced by a person outside the protected class or that the employer treated a similarly situated, non-protected person more favorably." *Nelson v. Univ. of Cincinnati,* 10th Dist. Franklin No. 16AP-224, 2017-Ohio-514, ¶ 33. "If the plaintiff meets her initial burden, the burden then shifts to the defendant to offer 'evidence of a legitimate, nondiscriminatory reason

for' the adverse action. * * * If the defendant meets its burden, the burden then shifts back to the plaintiff to demonstrate that the defendant's proffered reason was actually a pretext for unlawful discrimination." *Turner, supra* at ¶ 14.

{¶21} Defendant does not dispute that plaintiff was a member of a statutorily protected class and that she was qualified for her position. Defendant asserts that plaintiff did not suffer an adverse employment action. In the context of a Title VII discrimination claim, an adverse employment action is defined as a "materially adverse change in the terms or conditions" of employment. *Kocsis v. Multi-Care Mgmt. Inc.*, 97 F.3d 876, 885 (6th Cir.1996). An adverse employment action "constitutes 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." *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1998).

{¶22} Defendant contends that plaintiff abandoned her position on January 26, 2017, after she accused Ayers of being a racist. To support its contention, defendant points to plaintiff's email, wherein she informs ATC that she "planned on leaving today anyway," and the letter that she requested from Seese which states that: "Ms. Brown ended her assignment voluntarily." Defendant also submitted the affidavit of Ayers in which he explains the normal process that occurs when CRC decides to stop using the services of an ATC employee, as follows:

{¶23} "4. I am familiar with CRC's established process of terminating an HIT's employment from working at CRC. The process consists of the following and would have applied to Ms. Brown if I had made the request to have her terminated from working at CRC:

{¶24} "a. I must notify the deputy warden of special services that I am requesting that an HIT no longer be permitted to work at CRC for a specified reason, such as a work performance issue. The deputy warden would then have to approve my request. I

did not ask the deputy warden to request that Ms. Brown be terminated from working at CRC.

{¶25} "b. Following approval by the deputy warden of special services, I or another appropriate person at CRC would then physically escort the HIT through the front entry door of the prison. Before the HIT left the premises, I or the appropriate person would then ask the HIT to give me or some other employee her contractor ID badge so that she could no longer use it to enter the premises of CRC. I did not ask Ms. Brown to give me her contractor ID badge. And she was not escorted out of the prison; she left on her own accord.

{¶26} "c. I would then notify someone in CRC's labor relations department to put out an email apprising the appropriate people that the HIT is not permitted on the grounds of CRC. I did not notify any person in labor relations that Ms. Brown had been terminated because she had not been terminated.

{¶27} "d. I would then ask the assistant health care administrator (AHCA) to contact ATC apprising it why I believe the HIT is no longer permitted to work at CRC. I did [not] ask the AHCA to inform ATC that CRC had terminated Ms. Brown's employment And I never told ATC that Ms. Brown's employment had been terminated.

{¶28} "5. Ms. Brown could have returned to work at CRC on her next scheduled work day following January 26, 2017 and explained to management why she left her job on January 26, 2017.

{¶29} "6. ATC never contacted me to begin an investigation regarding why Ms. Brown chose not to return to work as an HIT at CRC following January 26, 2017." (Ayers' affidavit, ¶ 4-6.)

{¶30} Defendant also submitted the affidavit of Lilly, who states that it was his understanding that plaintiff did not return to work at CRC after January 26, 2017, and that plaintiff currently works as an HIT at Pickaway Correctional Institution. (Lilly affidavit, ¶ 3-4.) Seese testified that plaintiff ended her assignment at CRC voluntarily

because she did not report back to work after January 26, 2017, and Seese never received anything from CRC stating that plaintiff was terminated, such as an email or phone call notifying ATC that CRC did not want plaintiff to return. (Seese deposition, pgs. 13-23.)

{¶31} In response, plaintiff offers her testimony that Ayers told her to "get out," and alleges that Ayers' affidavit and deposition testimony is not credible.

{¶32} Construing the evidence most strongly in plaintiff's favor, the only reasonable conclusion is that plaintiff did not suffer an adverse employment action. The lack of any notice on CRC's behalf to ATC, coupled with plaintiff's own email stating that it would be her "last day anyway," and plaintiff's request for a letter from Seese stating that she left ATC voluntarily show that plaintiff quit her position at CRC. Accordingly, plaintiff has failed to prove that she suffered an adverse employment action as that term is used in discrimination claims under R.C. Chapter 4112.

{¶33} Furthermore, defendant asserts that plaintiff cannot show that she was replaced by a person outside the protected class. Although plaintiff argues that a Caucasian named Natalie replaced her, Lilly states the following in his affidavit: "It is my understanding that Ms. Brown did not return to work at CRC after January 26, 2017. During the time Ms. Brown worked as an HIT at CRC, she was assigned to work in Building 5, which was the medical reception area. Stephanie Scott (Ms. Scott), an African-American female, began working in Building 5 alongside Ms. Brown on January 12, 2017 and she stopped working at CRC on March 17, 2017. Ms. Scott was an employee of ATC and ATC assigned her to work at CRC. After Ms. Brown did not return to work at CRC, Ms. Scott performed all of the HIT job duties in Building 5. The HIT position in Building 5 was vacant until June 1, 2017, at which point Natalie Donahue (Ms. Donahue), a Caucasian woman, began working as an HIT. Ms. Donahue was an employee of ATC and ATC assigned her to work at CRC." (Lilly affidavit, ¶ 3.) Plaintiff offers nothing to rebut Lilly's account of the staffing of HITs at CRC.

{¶34} Finally, plaintiff asserted that defendant treated Kristy Gerber, a Caucasian, more favorably than it treated her. Although Gerber also worked at CRC, she was a nurse, not an HIT. "To establish that a 'comparable, non-protected person' was treated more favorably, "[t]he individuals with whom the plaintiff seeks to compare * * * her treatment must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344, 352 (6th Cir.1998). Although plaintiff and Gerber were both supervised by Ayers, it is undisputed that after Ayers counseled plaintiff and Gerber not to use profanity in the workplace, that conversation was over before plaintiff confronted him in his office with her allegations that he was a racist. Construing the evidence most strongly in plaintiff's favor, the only reasonable conclusion is that Gerber did not engage in the same conduct with Ayers that plaintiff did. Moreover, Gerber's duties as a nurse differed from plaintiff's as an HIT. Therefore, the only reasonable conclusion is that plaintiff was not replaced by a person outside the protected class, and that Gerber was not a "comparable, non-protected person." Accordingly, plaintiff has failed to state a prima facie case of race discrimination.

III. Retaliation

{¶35} R.C. 4112.02(I) states that it shall be an unlawful discriminatory practice: "For 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." An investigation contemplated under 4112.01 to 4112.07 of the Revised Code pertains to proceedings or hearings with the Ohio Civil Rights Commission (OCRC).

{¶36} In order to establish a prima facie case of retaliation, plaintiff is required to prove that: "'(1) plaintiff engaged in a protected activity; (2) the employer knew of plaintiff's participation in the protected activity; (3) the employer engaged in retaliatory conduct; and (4) a causal link exists between the protected activity and the adverse action.'" *Motley v. Ohio Civ. Rights Comm.,* 10th Dist. Franklin No. 07AP-923, 2008-Ohio-2306, ¶ 11, quoting *Zacchaeus v. Mt. Carmel Health Sys.,* 10th Dist. Franklin No. 01AP-683, 2002-Ohio-444. Protected activity involves either the "opposition clause," when an employee has opposed any unlawful discriminatory practice, or the "participation clause," when an employee 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. *See Motley, supra*, citing *Coch v. GEM Indus., Inc.*, Lucas App. No. L-04-1357, 2005-Ohio-3045, ¶ 29.

{¶37} To engage in a protected opposition activity, a plaintiff must "make an overt stand against suspected illegal discriminatory action." *Motley*, quoting *Comiskey v. Auto. Indus. Action Grp.*, 40 F. Supp.2d 877, 898 (E.D. Mich. 1999). "Opposition" requires that that the employee communicate to her employer "a belief that the employer has engaged in * * * a form of employment discrimination." *Crawford v. Metro. Govt. of Nashville & Davidson Cty., Tenn.*, 555 U.S. 271, 276 (2009). For purposes of a

retaliation claim, opposition to "demeaning and harassing conduct," without complaining of illegal discrimination or taking an overt stand against such suspected illegal discriminatory action, does not constitute a protected activity. *Murray v. Sears,* Case No. 1:09 CV 702, 2010 U.S. Dist. LEXIS 34256, 24 (N.D.Ohio April 7, 2010); *see also Fox v. Eagle Distrib. Co.,* 510 F.3d 587, 591-592 (6th Cir.2007). "[A] vague charge of discrimination in an internal letter or memorandum is insufficient to constitute opposition to an unlawful employment practice." *Booker v. Brown & Williamson Tobacco Co., Inc.,* 879 F.2d 1304, 1313 (6th Cir. 1989).

{¶38} The court is cognizant that the Sixth Circuit has stated that, "a plaintiff's burden of establishing a materially adverse employment action is less onerous in the retaliation context than in the anti-discrimination context." *Michael v. Caterpillar Fin. Servs. Corp.,* 496 F.3d 584, 595-96 (6th Cir.2007) (citing *Burlington N. & Santa Fe Ry.* Co. *v. White,* 548 U.S. 53, 68, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006)). "A plaintiff alleging retaliation need only show that the action taken by the employer 'well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.'" *Parks v. Geithner,* No. 3:09-cv-141, 2011 U.S. Dist. LEXIS 142055, at *39 (S.D.Ohio Dec. 9, 2011).

{¶39} In plaintiff's complaint and deposition, she claims that she engaged in a protected activity when she wrote an incident report on October 14, 2016, complaining about Ayers' treatment of Lilly, based upon what Margaretta Wright told her. Although plaintiff's complaint asserts that the investigation of Lilly regarded Title VII issues, plaintiff admitted in her deposition that she did not know whether the Lilly investigation concerned claims of discrimination. (Plaintiff's deposition, p. 107.) Indeed, the deposition testimony from Lilly shows that the underlying incident was a complaint that Lipp had filed stating that Lilly spoke to her in an aggressive manner when she failed to answer the telephone, and an incident of Lilly allowing another employee to use his computer password, not an allegation under Title VII or before the OCRC. Moreover,

plaintiff filed her incident report on October 14, 2016, and her last day of employment was January 26, 2017. Even if the court were to construe plaintiff's incident report as protected activity and her confrontation with Ayers as an adverse employment action, the confrontation with Ayers was not close enough in time to be regarded as being causally related to her incident report. *See Reeves v. Digital Equipment Corp.*, 710 F.Supp. 675, 677 (N.D.Ohio1989) ("as a matter of law, three months is too long to support an inference of retaliation.") Thus, the only reasonable conclusion is that her October incident report does not constitute protected activity.

{¶40} With regard to the November 21, 2016 incident report, it is undisputed that neither plaintiff nor Reynolds were disciplined for sharing a computer password, and filing an incident report about whether she had Ayers' permission to use that password is not complaining of illegal discrimination. Finally, as to her incident report on the last day of her employment, even if the court were to construe that she was reporting illegal discrimination, it is undisputed that there was no adverse employment action taken by defendant: plaintiff voluntarily left her position. Although plaintiff testified that she filed a charge with the EEOC, she filed that charge after her last day of work. (Plaintiff's deposition, p. 133.) Even if the court were to find that the confrontation with Ayers on January 26, 2017 was an adverse employment action, any protected activity of filing an EEOC charge occurred after plaintiff's employment ended. Thus, plaintiff could not show a causal link existed between the protected activity (filing an EEOC charge) and the adverse action (Ayers' conversation with plaintiff telling her to "get out.") Accordingly, the only reasonable conclusion is that plaintiff has failed to present evidence of a prima facie case of either race discrimination or retaliation. Thus, defendant's motion for summary judgment shall be granted.

PATRICK M. MCGRATH
Judge

[Cite as *Brown v. Corr. Reception Ctr.*, 2019-Ohio-1067.]

ALICIA BROWN Plaintiff v. CORRECTIONAL RECEPTION CENTER Defendant	Case No. 2018-00021JD Judge Patrick M. McGrath Magistrate Holly True Shaver JUDGMENT ENTRY

{¶41} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

Filed February 4, 2019
Sent to S.C. Reporter 3/26/19