

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Timothy Garnett,	:	
Plaintiff-Appellant,	:	
v.	:	No. 25AP-631 (C.P.C. No. 24CV-3648)
ViaQuest Residential Services, LLC,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 24, 2026

On brief: *Dewitt Law, LLC*, and *Michael W. DeWitt*, for appellant.

On brief: *Dismore & Shohl LLP*, *Jason W. Hilliard*, and *S. Joseph Stephens, III*, for appellee. **Argued:** *S. Joseph Stephens, III*.

APPEAL from the Franklin County Court of Common Pleas

BEATTY BLUNT, J.

{¶ 1} Plaintiff-appellant, Timothy Garnett, appeals from a decision of the Franklin County Court of Common Pleas granting the motion for summary judgment filed by defendant-appellee, ViaQuest Residential Services, LLC, (“ViaQuest” or “appellee”) pursuant to Civ.R. 56, and granting judgment in favor of ViaQuest. For the reasons that follow, we affirm the judgment of the trial court.

I. Facts and Procedural History

{¶ 2} On February 6, 2023, appellant was hired by ViaQuest, a company that provides in-home services to elderly and developmentally disabled clients as a “Program Manager.” It is undisputed this position involved “direct care” with clients of ViaQuest. Because of this, appellant was required to undergo a criminal background check pursuant to Adm.Code 5123-2-02(E). Further pursuant to this code section, certain criminal

offenses permanently exclude persons from serving in such a direct-care position, including the offense of felonious assault. *See* Adm.Code 5123-2-02(E)(1)(a)(iv). Notwithstanding that appellant had two prior convictions for felonious assault, one in 2004 and one in 2006—which he does not dispute—he signed a verification form stating he did not have any disqualifying offenses, along with an authorization to conduct the background check.

{¶ 3} On March 7, 2023, the background check results revealed appellant’s prior convictions for felonious assault. Appellant was promptly fired that very same day by the Human Resource Manager, Holly Riegel.

{¶ 4} On May 7, 2024, appellant filed a complaint alleging claims for hostile work environment/sexual harassment and retaliation pursuant to R.C. 4112.02.¹ In it, he alleged that during his brief employment, he was subjected to sexual harassment by Ms. Dunaway. Specifically, appellant identified two incidents: (1) a February 13, 2023, visit to Ms. Dunaway’s home after work, during which appellant claims Dunaway made suggestive comments, asked him to rub her neck, showed him her bedroom, and offered to make him her “special friend” with job-related “perks.” (Compl ¶ 15- 17; *see also* Feb. 3, 2025 Garnett Dep.); and (2) a March 5, 2023, workplace interaction during a staff meeting, where appellant alleges that Ms. Dunaway snapped her fingers, patted her thigh, and gestured for him to “come here” in a manner he found disrespectful. (Compl. at ¶ 20; Garnett Dep.)

{¶ 5} Appellant’s retaliation claim is premised on his termination of employment after he allegedly reported the alleged sexual harassment. Notably, however, appellant’s own deposition testimony shows that he never reported the February 13, 2023 incident at Ms. Dunaway’s home to anyone at ViaQuest before he was terminated. *Id.* And he continued to engage in friendly text message exchanges with Ms. Dunaway after that date, including sending her a “Happy Valentine’s Day” message on February 14. *Id.*; Ex. 9.

¹ We note that in October 2023—seven months after he was terminated from his employment on March 7, 2023—appellant filed a charge with the Equal Employment Opportunity Commission (“EEOC”) alleging a hostile work environment/sexual harassment and retaliation. The EEOC declined to pursue the charge.

{¶ 6} As for the March 5, 2023 workplace incident, appellant reported to Operations Manager Sam Thompson that he felt disrespected by Ms. Dunaway's snapping her fingers at him but did not characterize the interaction as sexual harassment. (Garnett Dep.).

{¶ 7} On March 3, 2025, ViaQuest filed its motion for summary judgment. ViaQuest's position is that appellant's termination was based solely on the results of his background check, which revealed the two felony convictions that legally barred him from his position. (Garnett Dep., Ex. 12; Termination Notice.) Appellant filed a memorandum in opposition to the motion for summary judgment, and ViaQuest filed a reply.

{¶ 8} On July 8, 2025, the trial court issued its decision and entry granting ViaQuest's motion for summary judgment and entering judgment in favor of ViaQuest. (July 8, 2025 Decision & Entry.) In its decision, the trial court found that appellant had not presented either a *prima facie* case of hostile work environment under R.C. 4112.02 or a *prima facie* case of retaliation under R.C. 2114.02(I). *Id.* at 9-10.

{¶ 9} This timely appeal followed and is now before the court.

II. Assignments of Error

{¶ 10} Appellant asserts the following assignments of error for our review:

1. The Franklin County Court of Common Pleas committed reversible error when it granted summary judgment in favor of the Appellee ViaQuest Residential Services, LLC ("ViaQuest") when it determined that there were no genuine issues of material fact regarding Appellant's claim of hostile work environment sexual harassment under R.C. 4112.
2. The Franklin County Court of Common Pleas committed reversible error when it granted summary judgment in favor of ViaQuest when it determined that there were no genuine issues of material fact regarding Appellant's retaliation claim of under R.C. 4112[.]

III. Law and Analysis

A. Standard of Review

{¶ 11} We review a decision on a motion for summary judgment under a de novo standard. *LRC Realty, Inc. v. B.E.B. Properties*, 2020-Ohio-3196, ¶ 11. De novo appellate review means the court of appeals conducts an independent review, without deference to the trial court's decision. *Schumacher v. Patel*, 2023-Ohio-4623, ¶ 16 (10th Dist.); *Coppo v. Fixari Family Dental Practice, LLC*, 2022-Ohio-1828, ¶ 9 (10th Dist.); *Wiltshire Capital Partners v. Reflections II, Inc.*, 2020-Ohio-3468, ¶ 12 (10th Dist.). Summary judgment is appropriate only when the moving party demonstrates: (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. Civ.R. 56(C); *A.J.R. v. Lute*, 2020-Ohio-5168, ¶ 15; *McConnell v. Dudley*, 2019-Ohio-4740, ¶ 18. In ruling on a motion for summary judgment, the court must resolve all doubts and construe the evidence in favor of the nonmoving party. *Premiere Radio Networks, Inc. v. Sandblast, L.P.*, 2019-Ohio-4015, ¶ 6 (10th Dist.).

{¶ 12} Pursuant to Civ.R. 56(C), the party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and of identifying those portions of the record demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). The moving party cannot satisfy this initial burden by simply making conclusory allegations, but instead must demonstrate, including by use of affidavit or other evidence allowed by Civ.R. 56(C), that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.*; *Wiltshire Capital Partners* at ¶ 13. If the moving party fails to satisfy this initial burden, the court must deny the motion for summary judgment; however, if the moving party satisfies the initial burden, the nonmoving party has a burden to respond, by affidavit or otherwise as provided under Civ.R. 56, with specific facts demonstrating a genuine issue exists for trial. Civ.R. 56(E); *Dresher* at 293; *Hall v. Ohio State Univ. College of Humanities*, 2012-Ohio-5036, ¶ 12 (10th Dist.), citing *Henkle v. Henkle*, 75 Ohio App.3d

732, 735 (12th Dist. 1991). If the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party. *Dresher* at 293.

B. First Assignment of Error—Hostile Work Environment

{¶ 13} In his first assignment of error, appellant asserts the trial court erred in granting summary judgment in favor of ViaQuest on his claim for hostile work environment/sexual harassment. We disagree.

{¶ 14} To prevail on a hostile work environment claim under R.C. 4112.02, a plaintiff must demonstrate: (1) the harassment was unwelcome; (2) the harassment was based on sex; (3) the conduct was sufficiently severe or pervasive to affect the terms, conditions, or privileges of employment; and (4) that either (a) the harassment was committed by a supervisor, or (b) the employer knew or should have known of the harassment and failed to take immediate and appropriate corrective action. *Hampel v. Food Ingredients Specialties, Inc.*, 2000-Ohio-128, paragraph two of the syllabus. *Timbers v. Sears, Roebuck & Co.*, 2004-Ohio-3469, ¶ 42 (8th Dist.); *Harter v. Chillicothe Long-Term Care, Inc.*, 2012-Ohio-2464, ¶ 16 (4th Dist.).

{¶ 15} Most relevant to this case is the third prong, i.e., whether the harassment is sufficiently severe or pervasive as to affect the terms, conditions, or privileges of employment. The analysis under this prong uses an objective standard; that is, a reasonable person in the plaintiff's position, considering all the circumstances, must think it severe. *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80-81 (1998), citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993).² The totality-of-the-circumstances standard employed here considers the entire work environment, all the relevant facts, all the surrounding circumstances, and the cumulative effect of all the incidents. *Hampel* at 181. In determining what a reasonable person would think, not only should the psychological effect of the conduct be considered, but also the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or rather a merely offensive utterance; and whether it unreasonably interferes with an

² This court has consistently acknowledged that the federal evidentiary standards and analysis used for alleged violations of Title VII under federal law also apply to alleged violations of R.C. Ch. 4112 under state law. *Chapa v. Genpak, LLC*, 2014-Ohio-897, ¶ 32 (10th Dist.), citing *Zacchaeus v. Mt. Carmel Health*, 2002-Ohio-444 (10th Dist.) (further citations omitted).

employee's work performance. *Id.* at 180, citing *Harris* at 23. No single factor is required. *Harris* at 23.

{¶ 16} Here, viewing the evidence in a light most favorable to appellant—i.e., even assuming everything he has asserted regarding the February 13, 2023 incident is true—under the *Harris* factors set forth above, this isolated incident does not rise to the level of actionable harassment. The conduct was neither severe nor pervasive, was not physically threatening or humiliating, and did not interfere with appellant's job performance. Indeed, appellant conceded at his deposition that he did not view the behavior of Ms. Dunaway at her home as harassment, but rather as her “trying to make a play. That's what I call it . . . and I just chose not to.” (Feb. 3, 2025 Garnett Dep. at 160.)

{¶ 17} Although appellant's characterization of Ms. Dunaway's behavior as “trying to make a play” potentially could be construed as being sexual in nature when read in isolation, other testimony of appellant makes clear that he did not view it as so. For example, appellant also testified that Ms. Dunaway had asked him to be her “special friend,” but he described such a relationship as being her sidekick or henchman, rather than some sort of sexual reference. *Id.* at 157-159. He further explained that Ms. Dunaway wanted him to take over as one of her “besties,” like Sam Thompson, because Sam was leaving for another position. *Id.* at 159. Finally, appellant testified that he walked away from the February 13, 2023 encounter thinking she is power-hungry and belittles and disrespects the people she manages, not thinking she wanted to engage in sexual conduct with him. *Id.* Accordingly, the February 13, 2023 incident cannot support a hostile work environment claim.

{¶ 18} As for the March 5, 2023 staff meeting incident, even assuming it is true that Ms. Dunaway snapped her fingers at appellant, patted her thigh and gestured to him to “come here,” this behavior cannot support a hostile work environment claim. As is the case with the February 13, 2023 incident, this is an isolated incident. Furthermore, while Ms. Dunaway's behavior toward appellant may have been disrespectful, the behavior was not sexual in nature. Notably, appellant acknowledged this in his deposition: that he felt disrespected. (*See* Garnett Dep.) But being disrespected by your supervisor at work is not the same thing as harassment; it is instead ordinary workplace friction. *See, e.g., Harter,*

2012-Ohio-2464, at ¶ 19 (4th Dist.), quoting *Faragher v. Boca Raton*, 524 U.S. 775, 788 (1998).

{¶ 19} Therefore, based on the foregoing, the trial court correctly found that as a matter of law, appellant failed to establish a *prima facie* case of hostile work environment under R.C. 4112.02. Accordingly, ViaQuest is entitled to summary judgment on this claim.

{¶ 20} Accordingly, based on the foregoing, we overrule appellant’s first assignment of error.

C. Second Assignment of Error—Retaliation

{¶ 21} In his second assignment of error, appellant asserts the trial court erred in granting summary judgment in favor of ViaQuest on his retaliation claim. Again, we disagree.

{¶ 22} To establish a *prima facie* case of retaliation under R.C. 4112.02(I), a plaintiff must demonstrate: (1) engagement in a protected activity; (2) the employer’s knowledge of that activity; (3) an adverse employment action; and (4) a causal connection between the protected activity and the adverse action. *Wu v. Northeast Ohio Med. Univ.*, 2019-Ohio-2530, ¶ 29 (10th Dist.).

{¶ 23} Under the *McDonnell Douglas* burden shifting analytical framework, a plaintiff must establish a *prima facie* case of retaliation by demonstrating “(1) the plaintiff engaged in a protected activity, (2) the employer knew the plaintiff engaged in the protected activity, (3) the employer subjected the plaintiff to an adverse employment action, and (4) a causal link existed between the protected activity and the adverse action.” *Wu* at ¶ 29. If the plaintiff demonstrates a *prima facie* case, the burden shifts to the employer to articulate a legitimate reason for its action. *Id.* If the employer meets that burden, the burden then shifts back to the plaintiff to demonstrate that the employer’s articulated legitimate reason was merely a pretext for retaliation. *Id.*

{¶ 24} Here, viewing the evidence in a light most favorable to appellant, appellant has failed to establish a *prima facie* case of retaliation under the factors set forth in *Wu*. Moreover, even assuming *arguendo* that he has, ViaQuest has articulated a legitimate, non-retaliatory reason for the termination—that is, that it was *legally required to terminate appellant* pursuant to Adm.Code 5123-2-02(E)(1)(a) based on appellant’s undisputed two

felony assault convictions. Ohio courts have repeatedly recognized that an employer's enforcement of a legal disqualification is a legitimate, nondiscriminatory reason for termination. *Taylor v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-2235, ¶ 27 (11th Dist.) Furthermore, appellant has presented no evidence that ViaQuest's stated reason for his termination was merely a pretext for retaliation.

{¶ 25} In short, the trial court correctly found that appellant's claim for retaliation fails as a matter of law. Therefore, ViaQuest is entitled to summary judgment on this claim, and the trial court did not err in granting summary judgment in favor of ViaQuest on appellant's claim for retaliation.

{¶ 26} Accordingly, based on the foregoing, we overrule appellant's second assignment of error.

IV. Disposition

{¶ 27} Having overruled appellant's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

EDELSTEIN and DINGUS, JJ., concur.
