[Cite as *Pickett v. Steve's Doghouse, Inc.*, 2025-Ohio-2368.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

ANNIE PICKETT,	:	
Plaintiff-Appellant,	:	No. 114526
v.	:	
STEVE'S DOGHOUSE, INC., ET AL.,	:	
Defendants-Appellees.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: June 26, 2025

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-23-985980

Appearances:

Annie Pickett, *pro se*.

Weston Hurd LLP, Warren Rosman, and John S. Kluznik, *for appellees*.

DEENA R. CALABRESE, J.:

{¶ 1} Plaintiff-appellant Annie Pickett ("Pickett") appeals the trial court's grant of summary judgment in favor of defendants-appellees Steve's Doghouse, Inc. ("Steve's Doghouse") and Edward Salzgeber ("Salzgeber") (collectively "appellees") on her claims of hostile-environment sexual harassment and retaliation. Pickett

also challenges the trial court's ruling granting appellees' motion to strike her second amended complaint and argues that the trial court committed multiple additional errors. After a thorough review of the law and facts, we affirm the decision of the trial court.

I. Factual Background

{¶ 2} Steve's Doghouse is a small diner-style restaurant in Cleveland, Ohio, located near the corner of Pearl Road and Denison Avenue. Salzgeber is the president of Steve's Doghouse and manages its operations. According to Salzgeber's affidavit, many of the diner's customers are working-class individuals employed by nearby heavy industries. The diner features counter seating for 15 patrons, as well as six booths. Authenticated photographs indicate that the workspace behind the counter, which includes a grill and cash register, is extremely narrow.

{¶ 3} To the extent feasible, Steve's Doghouse operates three shifts in order to serve its industrial patrons around the clock. On June 23, 2021, it hired Pickett as a third-shift server. Pickett testified at her deposition that her last serving job had been more than 20 years earlier. Salzgeber explained in his affidavit that the third shift had been shut down for several months during the Covid-19 pandemic and that finding workers had been difficult. He "was trying to restart the third shift at the Doghouse." (Salzgeber aff. at ¶ 5.)

{¶ 4} In support of its motion for summary judgment, Steve's Doghouse submitted several affidavits from Pickett's coworkers. Those affidavits, along with Salzgeber's, indicate that Pickett demonstrated performance issues such as working

slowly, arguing with both customers and coworkers, and ignoring duties assigned to her. Salzgeber stated she "had a difficult personality" and "would get angry at customers," resulting in the cook having to serve the customer. (Salzgeber aff. at ¶ 6.) According to Salzgeber, she also "misconstrued things or came to negative/incorrect conclusions regarding minor events." (Salzgeber aff. at ¶ 6.)

{¶ 5} Pickett testified at her deposition that in October 2021, she complained to Salzgeber that third-shift cook Danielle Frisch brushed her breasts on Pickett's back, after which Frisch simply said, "Excuse me." (Pickett dep. at 37.) There is no dispute that Pickett registered the complaint. Salzgeber averred that he responded by reviewing the diner's security video of the diner's back room, which contains dishwashing equipment, refrigeration equipment, and food lockers. He stated in his affidavit that all he observed was Frisch trying to move past Pickett in a narrow space in the back room, "trying to get past [Pickett], who was in front of the dishwasher." (Salzgeber aff. at ¶ 7.) He nevertheless spoke with Frisch about Pickett's complaint. Salzgeber claimed that after interviewing Frisch, he concluded that nothing inappropriate occurred and took no disciplinary action against her.

{¶ 6} Over the following months, Salzgeber investigated additional incidents of alleged inappropriate behavior. At one point, Salzgeber was at the cash register when he heard Pickett yell. He turned from the cash register and observed Frisch carrying food containers in both hands, trying to move around Pickett. Salzgeber again reviewed video footage. This time he saw Pickett partially blocking the doorway to the back room; Frisch, who was carrying containers from the cooler,

tried to squeeze by her. Salzgeber determined nothing inappropriate occurred. (Salzgeber aff. at ¶ 8.) Pickett testified in her deposition that she also reported to Salzgeber that Frisch "would walked [sic] past me really fast with her hand hanging down and rub her hand up against my butt." (Pickett dep. at 37.)

{¶ 7} Pickett testified at deposition that in a fall 2021 verbal exchange with first-shift cook, Orlando Roloa, during discussions regarding Pickett's efforts to purchase a car, Roloa looked to his groin and said, "You don't want none of this." (Pickett dep. at 64.) Pickett testified that she expressed confusion, and Roloa replied, "I get everything I need at home. My wife is very well satisfied." (Pickett dep. at 64.) The conversation went no further, and Pickett testified she had no further incidents with Roloa, who she rarely interacted with due to their shift schedules. (Pickett dep. at 63-65.) Salzgeber maintained in his affidavit that Pickett never reported this or any other incident involving Roloa to him. (Salzgeber aff. at ¶ 13.)

{¶ 8} In late 2021, Pickett complained to Salzgeber about contact with her coworker Delilah Dervic. In exhibit MM to her deposition testimony, an email to appellees' counsel bearing Bates No. PTF 023, Pickett appears to be referring to this incident, which she termed "butt bumping." Salzgeber reviewed security video. According to his affidavit, he "saw one co-worker bumping into another, that was it," with no evident sexual or otherwise inappropriate connotations. (Salzgeber aff. at ¶ 9.)

{¶ 9} One coworker interaction, also in late 2021, indisputably related to sexual activity. Pickett alleged that while in the kitchen area, Frisch told her that she had vomited while performing oral sex on a man and then showed her "a picture that the guy sent [Frisch] of his girlfriend giving him oral sex." (Pickett dep. at 117-118.) Pickett testified she found the picture "really gross and disgusting" and that the accompanying story "made it even worse." (Pickett dep. at 117-118.) Salzgeber stated in his affidavit that Pickett did not report "any incident concerning any photo" to him. (Salzgeber aff. at ¶ 13.) Pickett, however, testified at deposition that she reported the incident to Salzgeber. (Pickett dep. at 118.) She further testified, however, that this was the only time Frisch had shown her an explicit picture or told a risqué story. (Pickett dep. at 117-118.)

{¶ 10} Frisch's only other allegedly inappropriate encounter with Pickett occurred in January 2022. Pickett testified at deposition that Frisch's breast grazed her shoulder as Frisch walked by her. As she described the incident, "her right boob hit my left shoulder and she kept walking like she didn't do anything." (Pickett dep. at 42.) Salzgeber averred that he "never heard from Ms. Pickett concerning any breast grazing incident."

{¶ 11} On or about March 2, 2022, Steve's Doghouse terminated Frisch for cause. While off duty, she had come to the restaurant intoxicated, accompanied by a friend, and berated customers. (Pickett dep. at 43-51.) Dervic had resigned even earlier, on or about February 26, 2022. (Pickett dep. at 62.)

{¶ 12} On April 19, 2022, Pickett was scheduled to work with a cook named Amanda, who had previously told Salzgeber she would not work with Pickett. (Salzgeber aff. at ¶ 10 and Exhibit DOG 000129.) According to Salzgeber's affidavit, he tried to convince Amanda to work some more shifts with Pickett, but Amanda refused to work with her. (Salzgeber aff. at ¶ 11.) Because he did not have a cook for third shift on April 19, 2022, he canceled the third shift and informed Pickett that the diner would be closed overnight. (Salzgeber aff. at ¶ 11 and Exhibit DOG 000075). He sent a similar text to Pickett the following day, April 20, indicating, "I do not have a cook for tonight." *Id*. Pickett herself testified that Salzgeber had "put [Amanda] on day shift." (Pickett dep. at 76.)

{¶ 13} Salzgeber circled back to Pickett to ask if she could work the third shift during the week of May 1, 2022. He avers that he "heard nothing back for several days," and therefore "considered Ms. Pickett AWOL, that is, a quit; she abandoned her job." (Salzgeber aff. at ¶ 12.)

{¶ 14} The attachments to Salzgeber's affidavit paint a somewhat different picture. The sequence of texts from Salzgeber to Pickett do appear to align with his affidavit. Exhibit DOG 000076 is a screen capture of a text sent by Salzgeber to Pickett on May 1, 2022, at 2:59 p.m., asking if she wanted to "be put back on the schedule this week," and what days she would be unavailable. Exhibit DOG 000077, which consists of similar text message screen captures, indicates Salzgeber sent Pickett a text on May 2, 2022, at 12:31 p.m. with a photograph of the work schedule, and then another text at 9:26 p.m. asking, "Are you coming in tonight?"

{¶ 15} Salzgeber's statement that he did not hear back from Pickett for several days, however, is belied by further screen captures. The screen captures indicate that Pickett sent a text message to Salzgeber the next evening, May 3, 2022, at 10:55 p.m., indicating she had just seen his messages and asking if she had been put on the schedule for the week. (Exhibit DOG 000078.) Pickett sent a follow-up message May 8, 2022, at 9:30 p.m., and again on May 10, 2022, at 12:43 p.m., also asking to work. (Exhibits DOG 000079-000080.)

{¶ 16} Despite these text messages, however, it appears undisputed that on April 25, 2022, after Steve's Doghouse had been closed during third shift for lack of a cook, Pickett began working as a server at an IHOP restaurant in the Steelyard Commons area. (Exhibit F to Appellees' Motion for Summary Judgment.) Pickett testified that she believed she had been "[s]oftly fired" by Steve's Doghouse in April 2022, and that she therefore had no interest in returning. (Pickett dep. at 74-76.)

II. Procedural History

{¶ 17} Following her receipt of administrative right-to-sue letters issued by the Ohio Civil Rights Commission, Pickett, through counsel, filed a complaint in common pleas court on September 26, 2023, against appellees. Pickett's complaint alleged that during her employment as a server at Steve's Doghouse, she suffered hostile-environment sexual harassment in violation of R.C. 4112.02(A). Pickett further contended that after she complained, appellees retaliated against her in violation of R.C. 4112.02(I) by terminating her employment.

{¶ 18} On October 30, 2023, appellees filed their answer. Counsel for the parties held a Civ.R. 26(F) planning conference on November 6, 2023, and filed the required Civ.R. 26(F)(3) report on November 7, 2023. The court held a case-management conference on November 28, 2023, which it memorialized the same day in a journal entry. With leave of court, Pickett filed her amended complaint on November 30, 2023. It deleted references to possible federal claims, added coverage allegations (specifically that Steve's Doghouse is an "employer" and Salzgeber a "person" under R.C. 4112.01), and fixed a typographical error in a code citation. The amended complaint neither added nor subtracted claims; the two counts — hostile environment and retaliation — remained unchanged. Appellees answered the amended complaint on December 12, 2023. The parties engaged in discovery. Following a March 26, 2024 telephone conference with the court, the discovery cutoff and dispositive-motion deadline were extended.

{¶ 19} After several months of discovery, on May 6, 2024, Pickett's attorney moved to withdraw as counsel. Her attorney stated in the motion that he and Pickett "have irreconcilable differences that have led Plaintiff to discharge the undersigned and his firm[.]" The trial court scheduled a hearing on the motion for June 13, 2024, and required both Pickett and her attorney to be present in person.

{¶ 20} The hearing transcript has been included in the record on appeal. It reflects that the court took pains to ensure that Pickett's interests were adequately protected, including a line of questioning related to ensuring that Pickett's attorney and his firm would turn over their complete file on the matter. The trial court also

stopped Pickett when she was on the verge of revealing privileged communications. Specifically, Pickett asked: "[C]an I please read to you exactly what I wrote to [the withdrawing attorney]?" The court replied: "No . . . you cannot." (Tr. 5.)

{¶ 21} After granting the attorney's motion to withdraw, the trial court questioned Pickett regarding her plans for proceeding with the case, i.e., whether she intended to retain new counsel or proceed pro se. Pickett indicated she would represent herself. The trial court explained that it would be required to hold her to the same standards as a represented litigant:

> Now, do you understand that, in proceeding pro se, this Court has to hold you to the same standard against seasoned attorneys as if you had gone to law school, passed the bar exam? All the rules with regards to discovery and so forth, that's on you to learn and know; and the Court cannot assist you. Do you understand that?

(Tr. 9.) Pickett responded in the affirmative. *Id.* Discovery thereafter continued. The parties engaged in court mediation on June 26, 2024, but the case did not resolve.

{¶ 22} On June 21, 2024, shortly before the scheduled mediation, Pickett filed a second amended complaint.[1] On July 3, 2024, appellees filed a motion to strike Pickett's second amended complaint, arguing that it had been filed without leave of court and, further,

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[1] As discussed more fully below, the court struck the second amended complaint by order dated September 11, 2024. As a result, the clerk of courts removed any June 21, 2024 appearance-docket-line item identifying Pickett's filing. The only remaining June 21, 2024 appearance-docket entry is a notation that Pickett paid a filing fee associated with the second amended complaint. We note that despite being scrubbed from the trial court's appearance docket, the second amended complaint was included in the record on appeal.

> the second amended complaint is permeated throughout with . . . scandalous remarks concerning plaintiff's former counsel, defense counsel, and possibly the court; . . . redundant allegations added to the claims for sexual harassment and retaliation extant in the first amended complaint filed on November 28, 2023; [and] immaterial and impertinent allegations having nothing to do with the matters of this lawsuit[.]

{¶ 23} Appellees pointed out that while Pickett's first amended complaint consisted of 88 paragraphs, her pro se second amended complaint consisted of 208 paragraphs, all without substantively altering the core claims of hostile-environment harassment and retaliation and instead merely adding purported evidence in support of those claims. Appellees wrote:

> [T]he second amended complaint is a recitation of much of the discovery evidence that has been produced in this case over the past four months. This evidence, mostly in the form of texts produced during discovery does not add anything substantive to the averments already made in the first amended complaint.

{¶ 24} Appellees noted that the second amended complaint also contained various new allegations not pertinent to her claims, such as work scheduling issues, work relationship difficulties with a female coworker, and allegations that a coworker engaged in theft, none of which related to her hostile-environment-sexual-harassment or retaliation claims. Appellees stated that much of the second amended complaint was devoted to attacks not only on appellees' counsel, but on Pickett's former attorney. Appellees argued that Pickett "mischaracterizes [any] evidence or a statement in a pleading she doesn't like . . . as 'fraud' — even when her own attorney produced such evidence or statement." Finally, appellees contended that because such issues "permeate" the second amended complaint, this justified

striking it in its entirety, but that Pickett would not be prejudiced because "she will still have the same two causes of action that she has always had."

{¶ 25} A flurry of pleadings followed. On July 8, 2024, Pickett filed her opposition to the motion to strike. The caption properly identifies the pleading as an opposition brief, but went on to state that "defendant's defense is based on complete fraud upon the court." Pickett's July 8 opposition brief is 167 pages in length. In addition to attacking both her former counsel and appellees' counsel and accusing them of racism, Pickett warned the trial court that she "can smell corruption from a mile away and this is corruption that better not proceed with the court as a conspiracy against Pickett."

{¶ 26} While much of Pickett's July 8, 2024 brief consists of attacks on her former attorney and appellees' counsel, it confirms that her allegations of fraud and document tampering were based on her belief that the date stamps on certain text messages produced by her former counsel were formatted differently than on her personal phone. Pickett had actually raised these allegations during her July 2, 2024 deposition. In an effort to resolve the dispute, the court held a telephone conference on July 9, 2024. Pickett participated, as did appellees' counsel. According to appellees' motion to compel filed two days later on July 11, 2024, appellees had suggested that because Pickett's concerns related to documents her own attorney had turned over, a logical resolution would be for her to produce the text messages herself. Appellees alleged in their motion that Pickett rejected that proposal, claiming that she had produced the documents through her previous attorney. In

their motion to compel, appellees countered that Pickett "cannot say on the one hand I've produced documents and on the other hand say the documents produced by my agent are not real documents," arguing that this is equivalent to "saying that the actual text documents have not been produced." Appellees asked the court to order Pickett "to produce the text documents she says are the correct versions using a new prefix." The court never ruled on appellees' motion to compel.

{¶ 27} The court held another telephone conference on July 16, 2024. Pickett again participated, along with appellees' counsel. The court scheduled a hearing for August 21, 2024, to address the discovery dispute and other unspecified issues.

{¶ 28} On July 19, 2024, Pickett filed an amended opposition to appellees' motion to strike her second amended complaint. This pleading, consisting of 159 pages, expanded on her fraud allegations by alleging that appellees' counsel "committed 132 counts of fraud upon the court" and that her former attorney "committed 155 counts of fraud." "[B]oth attorneys," she alleged, "have conspired against Plaintiff Pickett and against the judicial machinery to commit a total of 287 counts of fraud upon the court between the two." The amended opposition does helpfully move her exhibits (mostly screenshots of text messages) to the end of the brief rather than inserting them directly into the narrative as in her original opposition.

{¶ 29} Appellees filed their reply brief in support of their motion to strike the second amended complaint on July 26, 2024. The reply brief clarified that at least part of the dispute regarding the authenticity of text message screenshots was

related to the different ways iPhones and Android phones display text messages, including date and time stamps. More importantly, the reply brief emphasized Pickett's failure to seek leave and the immateriality and redundancy of the second amended complaint.

{¶ 30} Pickett, without leave, filed a surreply (captioned "Response to defendant's reply brief") on August 6, 2024. In this 67-page filing, she purported to add "two counts of perjury" against appellees' counsel and Salzgeber.

{¶ 31} On August 8, 2024, appellees filed a Civ.R. 11 motion to strike all of Pickett's filings after June 21, 2024, principally based on her repeated allegations impugning the integrity of appellees' counsel. In their brief, appellees sought to clarify further the two text message issues, explaining that one issue related to Pickett's own production of documents through counsel (i.e., formatting differences between screenshots produced by Pickett's counsel versus screenshots Pickett took herself), and the second related to text message screenshots produced by appellees (i.e., formatting differences between an Android phone such as Pickett's and an iPhone such as Salzgeber's). Pickett filed an opposition brief on August 12, 2024. The trial court never ruled on appellees' Civ.R. 11 motion.

{¶ 32} In the interim, on August 9, 2024, appellees filed Pickett's deposition transcript, which consisted of two volumes. Pickett's deposition had been conducted over two days, July 2, 2024, and July 29, 2024. Appellees filed their motion for summary judgment on August 15, 2024. On August 16, 2024, they filed additional exhibits consisting primarily of affidavits and discovery responses.

{¶ 33} Pickett filed an opposition brief on August 21, 2024. In addition to narrative arguments, the opposition contains an item captioned as "declaration of Annie Pickett with direct evidence," followed by exhibits numbered one through 42. The declaration is purportedly made under penalty of perjury, but it contains no legal oath or affirmation, is not signed, and is not notarized.

{¶ 34} The August 21 discovery hearing was evidently converted to a conference. The court's August 22, 2024 journal entry ordered Pickett to turn over certain unspecified documents within seven days and granted appellees 14 days leave to file a reply brief in support of their motion for summary judgment. The court also scheduled another conference for September 4, 2024.

{¶ 35} Appellees filed their reply brief on September 4, 2024. The same day, without leave to file a surreply, Pickett filed a pleading captioned, inter alia, "Annie Pickett's deposition transcripts answers in support of opposition to motion for summary judgment." This pleading included several pages of Pickett's deposition, as well as email printouts and text message printouts. The primary focus of the September 4, 2024 surreply, however, was to further attack appellees' counsel.

{¶ 36} The court held another conference on September 4, 2024, as scheduled. Pickett appeared, along with appellees' counsel. On September 5, 2024, the court filed an entry indicating it would rule on pending motions within 14 days.

{¶ 37} On September 11, 2024, the court granted appellees' motion to strike Pickett's second amended complaint. The trial court reasoned in its journal entry that Pickett had filed the second amended complaint without leave, that it contained

several allegations unrelated to her employment, and that the second amended complaint raised the same causes of action (hostile-environment sexual harassment and retaliation) as the first amended complaint, such that striking it would not prejudice Pickett in any fashion.

{¶ 38} Pickett promptly redirected her ire to the trial court judge. On September 11, 2024, after the court had ruled against her with respect to the second amended complaint, Pickett filed a 103-page pleading captioned, inter alia, "Disqualification of [the trial court judge]" with exhibits and affidavit.[2] Pickett purported to warn in the caption that "[t]he ruling will be void if [the trial court judge] grants the Defendant's motion for summary judgment in any part because federal crimes are being committed." Nothing in the record indicates that Pickett ever filed an affidavit of disqualification with the Ohio Supreme Court.

{¶ 39} Pickett's next filing, on September 17, 2024, was captioned "Brief in Support of Plaintiff's Motion to Recuse." Pickett appeared to be attempting to address the common pleas bench collectively; she requested "that this Honorable Court recuse [the trial court judge] from this action." Pickett alleged that the trial court judge was "involved in a conspiracy to commit a federal crime," that the trial court judge "IS A LIAR, with all capital letters, and a criminal," and myriad other allegations against the trial court judge, appellees' counsel, and her "dirty" former attorney. She alleged that the trial court judge intended to "retire at the expense of

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[2] While the formatting of Pickett's affidavit is irregular, the affidavit — unlike the declaration filed in opposition to appellees' motion for summary judgment — indicates that Pickett was "duly sworn" and contains a notary seal and identifying stamp.

[Pickett's] suffering on a bribe that was agreed upon" between her previous attorney and appellees' counsel.

{¶ 40} Appellees opposed disqualification on September 18, 2024, framing Pickett's filing as a motion. The court treated it as such and denied it by entry dated September 19, 2024.[3] It did not mince words. In addition to noting that the proper forum for an affidavit of disqualification is the Ohio Supreme Court, the trial court wrote:

> Pickett's baseless accusations are not grounds for recusal. The court is not involved in a conspiracy against Pickett. The court has not discussed this matter with [her] former counsel, . . . other than the hearing on his motion to withdraw which was on the record. The court has not had any ex parte communications with defense counsel. Pickett has been present for all communications between the court and defense counsel related to this matter.

Despite this unequivocal ruling, Pickett filed a reply brief to appellees' opposition on September 27, 2024.

{¶ 41} On September 30, 2024, Pickett filed another affidavit, which she also captioned as an "expert report." Pickett purported to be her own expert, but not with respect to her claims of hostile-environment sexual harassment, retaliation, or issues typically subject to expert testimony in employment cases, such as front pay. She instead claimed in her "expert report to you," the trial judge, that "[y]ou are a criminal," as well as "bias[ed]," and "corrupt," and "a liar," and "partial to [appellees' counsel] because you are being paid." Pickett declared that any order issued by the

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[3] The court filed a nunc pro tunc entry on September 23, 2024, to correctly identify Pickett as the moving party. The original entry had erroneously identified appellees as the movants.

trial court would be "void" and carry "no weight because fraud upon the court has been committed." She ultimately concluded: "I don't like any of you. You are all a VERY BAD SEED. And I like everybody. THAT IS MY EXPERT REPORT."

{¶ 42} On October 8, 2024, the trial court granted appellees' motion for summary judgment, filing a 12-page opinion. This timely appeal followed.

III. Analysis

{¶ 43} Pickett raises 12 assignments of error for our review, listed here verbatim with the exception of bracketed content and ellipses:

> **Error One:** The trial court [judge] intentionally and maliciously erred when she granted defendant's . . . Motion to Strike Appellant's Amended Complaint for Damages filed by Pickett on June 21, 2024, to conceal evidence from the court by removing it from the Appellant's Court Docket for the purpose of making it inaccessible to the Supreme Court of Ohio on 09/18/2024,, the Court of Appeal presently, and the Appellant, which is a violation under 18 U.S.C. § 1519.and Under Section 2921.12 is a 3rd degree felony in Ohio.
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> **Error Two:** The trial court [judge] raised her right hand and swore under the 28 U.S.C. § 453 — U.S. Code — Unannotated Title 28. Judiciary and Judicial Procedure § 453. Oaths of justices and judges that she would administer justice without respect to persons and do equal right to the poor and to the rich, and that she will faithfully and impartially discharge and perform all the duties incumbent upon her as Judge, under the Constitution and laws of the United States. So, help her God." And she lied.
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> **Error Three:** The trial court [judge] erred when she abused her discretion by intentionally allowing the color of green to cause her to violate her judicial oath and involved herself in a crime and committed an act of Civil Conspiracy that was orchestrated by the Appellant's former attorney . . . and defense counsel, . . . who sits in the Chair of Admission of the Cleveland Metropolitan Bar Association for a violation under section 2923.01.
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> **Error Four:** The trial court [judge] intentionally erred by denying that Appellant her rights to be heard in the court of law in which she is protected under the United States Constitution and a violation of the Appellant's rights under 18 U.S. Code § 242.

Error Five: The trial Court, [judge] erred when she abused her discretion by intentionally not reporting [Pickett's prior attorney's] Misconduct of forging the Appellant's signature on EEOC and OCRC federal documents to withdraw the Appellant's discrimination charges against Steve's Doghouse, Inc., and Edward Salzberger without the Plaintiff knowledge or consent, which is a violation of Ohio Jud. Cond. R. 2.15 (A) (B), committed by [the judge], and a violation under Ohio Revised Code (ORC) Section 2913.31, crime of forgery committed by [her prior attorney].

Error Six: The trial court [judge] erred when she abused her discretion by intentionally violating her Judicial Oath and all actions points to the possibility and highly likely than not, accepted a bribe to be a part of the conspiracy to deny the Appellant from obtaining Compensatory Damages for violations pursuant to O.C.R.C § 4112.02(1) by highly and likely accepted a bribe under violation of 18 U.S. Code § 201 (b) — Bribery of public officials and witnesses.

Error Seven: The trial court [judge] erred when she violated Ohio Jud. Cond. R. 2.15 (B) by intentionally allowing [appellees' counsel] to violate Section 2921.12, to file fake and fraudulent text messages evidence that [the judge] was aware was the Appellant's original text messages from her cell phone to prove her case, that the defendant's and [appellees' counsel] had altered to use as their own defense against the Appellant. The Appellant was defending herself against her own evidence. Under Section 2921.12: Tampering with evidence makes it a crime to alter, conceal, or destroy any thing with the purpose to hinder its value in an official proceeding or investigation. This is a 3rd degree felony in Ohio, in which the Appellant tried to explain to [appellant's prior attorney], who continued to tell the Appellant she did not know what she was talking about. And the Appellant also tried to explain to [appellees' attorney], and he stated he was not committing fraud upon the court, and as the evidence presents itself, fraud upon the court is clearly the factor in this matter coming from the defense.

Error Eight: [Judge] erred when she accepted in-admissible evidence when she knew that the defendant's Salzberger and their attorney on record . . . were filing evidence that did not belong to the defendants in which [the judge] was in violation of Section 2913.42.

Error Nine: The trial Court [judge] erred when she chose to use her Chamber, which is a political office that is owned by the judicial machinery which is a part of the Legislative Branch and is responsible for representing the people of the United States, as a vehicle to commit a crime and to allow

a crime to be committed against the Appellant who had no business being inside [the judge's] Chamber, but as a favor to commit by [appellees' counsel] under a violation of the Ohio. Jud. Cond. R. 1.3, she misused her Chamber which is against the laws of justice, and a violation of her Judicial Oath.

Error Ten: The trial court [judge] erred and intentionally kept the Appellant's case from in front of a jury because she knew the defendants did not stand a chance on an honest hearing according to the law, and [appellees' counsel] made [the judge] aware the Appellant was looking forward to presenting her case in front of a jury, but the Appellant's ex-attorney . . . had told the Appellant the jury will never hear her case and her case would never make it to court. So, [the judge] made sure the Appellant's case would not be heard and violated her Judicial Oath by violating Rule 2.6 — Ensuring the Appellant's Right to Be Heard, Ohio Jud. Cond. R. 2.6. The trial [court judge] did not err but deliberately violated the Appellant 14th Amendment Constitutional Rights and Equal Access to Justice with Due Process of the Law.

Error Eleven: The trial court [judge] did not err, but intentionally granted the Defendant's Motion for Summary Judgment because she was involved in a civil conspiracy, she got paid, she allowed the defendants to commit fraud upon the court, she committed fraud upon the court. She violated her Judicial Oath on every level, and she violated Rule 56. Summary Judgment, Federal Rules of Civil Procedure, which clearly states, "The court shall grant summary judgment is the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Error Twelve: The trial court [judge] violated Ohio Jud. Cond. R. 2.11, by not recusing herself in spite of the Appellant filing an Affidavit of Disqualification on September 11, 2024, and September 17, 2024, because she knew [the judge] had planned to grant the defendant's Motion for Summary Judgment.

{¶ 44} We address some of Pickett's assignments of error together and out of order. Finding no merit to the appeal, we affirm.

A. Eleventh Assignment of Error — Summary Judgment

{¶ 45} In her eleventh assignment of error, Pickett contends the trial court erred by granting summary judgment in favor of appellees. While she quotes the

Federal Rules of Civil Procedure, which are inapplicable to Ohio trial-court proceedings,[4] her selected excerpt echoes Civ.R. 56(C), which provides in pertinent part:

> 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.

Id.

{¶ 46} Ohio appellate courts "review summary judgment rulings de novo, applying the same standard as the trial court." *Montgomery v. ExchangeBase, LLC*, 2024-Ohio-2585, ¶ 47 (8th Dist.), citing *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). We therefore "accord no deference to the trial court's decision and conduct an independent review of the record to determine whether summary judgment is appropriate." *Montgomery* at ¶ 47. As this court explained in *Montgomery*:

> Under Civ.R. 56, summary judgment is appropriate when no genuine issue exists as to any material fact and, viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion that is adverse to the nonmoving party, entitling the moving party to judgment as a matter of law. *Id.* On a motion for summary judgment, the moving party carries an initial burden of identifying specific facts in the record that demonstrate his or her entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). If the moving party fails to meet this burden, summary judgment is not appropriate; if the moving party meets this burden, the nonmoving party has the reciprocal burden to

[4] "[T]he federal rules of civil procedure govern the procedure in all civil actions and proceedings in the United States district courts" and "do not govern civil procedure in Ohio state courts." *Wells Fargo Bank, N.A. v. Collins*, 2021-Ohio-508, ¶ 28 (8th Dist.).

> point to evidence of specific facts in the record demonstrating the existence of a genuine issue of material fact for trial. *Id.* at 293. Summary judgment is appropriate if the nonmoving party fails to meet this burden. *Id.*

Id. at ¶ 48.

{¶ 47} "A fact is *material* if it 'might affect the outcome of the suit under the governing law' of the case." (Emphasis added.) *Oko v. Cleveland Div. of Police*, 2021-Ohio-2931, ¶ 23 (8th Dist.), quoting *Turner v. Turner*, 67 Ohio St.3d 337, 340 (1993), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). *See also Montgomery* at ¶ 49. In addition, "[o]nly *genuine* issues of material fact preclude summary judgment. A factual dispute is 'genuine' only if 'it allows reasonable minds to return a verdict for the nonmoving party.'" (Emphasis in original.) *Huntington Natl. Bank v. Blount*, 2013-Ohio-3128, ¶ 32 (8th Dist.), quoting *Sysco Food Servs. v. Titan Dev.*, 1995 Ohio App. LEXIS 4762, *7 (9th Dist. Oct. 25, 1995), citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Anderson*. *See also Montgomery* at ¶ 49.

{¶ 48} Pickett's amended complaint asserted two claims, hostile-work-environment sex discrimination and retaliation. She alleges that she was the victim of unwanted touching by two female coworkers, that one of those coworkers told her a sexually explicit story and (as part of the same incident) showed her a photo depicting sexual activity, and that a male cook made a reference, albeit not explicit, to his genitals. Pickett contends that in retaliation for her reports of at least some of these incidents, Salzgeber terminated her employment.

1. Hostile-Environment Sexual Harassment

{¶ 49} "R.C. 4112.02(A)'s prohibition of sexual discrimination in employment includes 'hostile environment' harassment, i.e., 'harassment that, while not affecting economic benefits, has the purpose or effect of creating a hostile or abusive working environment.'" (Cleaned up.) *Montgomery*, 2024-Ohio-2585, at ¶ 52 (8th Dist.), quoting *Hampel v. Food Ingredients Specialties*, 89 Ohio St.3d 169, 176 (2000). A "hostile work environment exists where a workplace "'is permeated with discriminatory intimidation, ridicule, and insult' that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'"" *Montgomery* at ¶ 57, quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993), quoting *Meritor Savs. Bank, FSB v. Vinson*, 477 U.S. 57, 65 (1986).[5]

{¶ 50} Pursuant to Ohio Supreme Court authority:

> In order to establish a claim of hostile-environment sexual harassment, the plaintiff must show (1) that the harassment was unwelcome, (2) that the harassment was based on sex, (3) that the harassing conduct was sufficiently severe or pervasive to affect the "terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment," and (4) that either (a) the harassment was committed by a supervisor, or (b) the employer, through its agents or supervisory personnel, knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

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[5] Because of similarities between R.C. 4112.02 and Title VII of the Civil Rights Act of 1964, Ohio courts often look to federal cases interpreting Title VII when considering employment-discrimination claims under Ohio law. *Ingram v. Glavin*, 2023-Ohio-1290, ¶ 46 (8th Dist.); *Crable v. Nestle USA, Inc.*, 2006-Ohio-2887, ¶ 23 (8th Dist.).

Hampel at 176-177. *See also Khalia Ra v. Swagelok Mfg. Co., L.L.C.*, 2021-Ohio-1657, ¶ 18 (8th Dist.); *Foster v. Ohio Bell Tel. Co.*, 2009-Ohio-6465, ¶ 25 (8th Dist.). As this court discussed in *Montgomery*, this sets a high bar for a plaintiff:

> The standard for assessing hostility is "demanding" in order to "filter out complaints that attack 'the ordinary tribulations of the workplace.'" *Faragher v. Boca Raton*, 524 U.S. 775, 788, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998), quoting B. Lindemann & D. Kadue, *Sexual Harassment in Employment Law* 175 (1992); *see also Chapa v. Genpak, LLC*, 2014-Ohio-897, ¶ 35 (10th Dist.) (same); *Parker v. Hankook Tire Mfg. Tenn., LP*, 2023 U.S. App. LEXIS 34010, *10 (6th Cir. Dec. 21, 2023) ("'This standard sets a high bar for plaintiffs in order to distinguish meaningful instances of discrimination from instances of simple disrespect.'"), quoting *Khalaf v. Ford Motor Co.*, 973 F.3d 469, 485 (6th Cir. 2020). Conduct that is "merely offensive" is insufficient to support a hostile work environment claim. *Harris* at 21. Likewise, actions such as "simple teasing, offhand comments, and off-color jokes, while often regrettable, do not cross the line into actionable misconduct." *E.E.O.C. v. Fairbrook Med. Clinic, P.A.*, 609 F.3d 320, 328 (4th Cir. 2010).

Montgomery at ¶ 59; *see also Blagg v. S.T.O.F.F.E. Fed. Credit Union*, 2024-Ohio-2579, ¶ 56 (8th Dist.) (same standard for claim of hostile environment based on race).

{¶ 51} In determining whether alleged harassment "was sufficiently 'severe or pervasive' to affect the terms, conditions or privileges of employment and create a hostile work environment," courts view the work environment "'as a whole,' considering the 'totality' of the facts and circumstances." *Montgomery* at ¶ 60, citing *Hampel* at 180-181. The "totality" includes "the frequency of the alleged discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance and whether it unreasonably interferes

with an employee's work performance." *Montgomery* at ¶ 60, citing *Hampel* at 180-181. "'[T]he issue is not whether each incident of harassment standing alone is sufficient to sustain the cause of action in a hostile environment case, but whether — taken together — the reported incidents make out such a case.'" *Montgomery* at ¶ 60, quoting *Williams v. GMC*, 187 F.3d 553, 562 (6th Cir. 1999). "A plaintiff can prevail by showing that the harassment was severe or pervasive or both." *Blagg* at ¶ 58.

{¶ 52} Moreover, there is both an objective and subjective component to a court's inquiry. """The conduct must be severe or pervasive enough to create an environment that a reasonable person would find hostile or abusive, and the victim must subjectively regard that environment as abusive.""" *Montgomery*, 2024-Ohio-2585, at ¶ 61 (8th Dist.), quoting *Johnson v. Ford Motor Co.*, 13 F.4th 493, 505 (6th Cir. 2021), quoting *Black v. Zaring Homes, Inc.*, 104 F.3d 822, 826 (6th Cir. 1997); *see also Hampel*, 89 Ohio St.3d at 176 ("'Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment — an environment that a reasonable person would find hostile or abusive — is beyond Title VII's purview. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation.'"), quoting *Harris*, 510 U.S. at 21-22.

{¶ 53} Our review of the record, including Pickett's complete deposition and the affidavits and exhibits attached to appellees' motion for summary judgment,

indicates that appellees met their Civ.R. 56(C) by presenting evidence of specific facts demonstrating the lack of evidence to support critical elements of Pickett's hostile-environment-sexual-harassment claim.[6] The record also reflects that Pickett failed to satisfy her reciprocal burden.

a. Physical Contact

{¶ 54} Appellees presented evidence that the incidents of physical contact, which they aptly term "body brushings," occurred in the cramped confines of the diner. With respect to the October 2021 incident in the back room involving Frisch's breasts touching Pickett's back, Pickett admitted at deposition that this was a one-time occurrence. (Pickett dep. at 107.) Moreover, there is no indication in her testimony that Frisch lingered or said anything sexual. Instead, Pickett testified that she reacted quickly, but "by the time [Pickett] could turn around and look, [Frisch] was on her way out the door saying, 'Excuse me.'" (Pickett dep. at 36-37.) Moreover, Salzgeber's affidavit indicated he reviewed video footage and saw nothing to indicate sexual overtones.

{¶ 55} The same holds true with respect to subsequent physical contact between Frisch and Pickett while Salzgeber was on the premises and working at the cash register. He viewed video of the incident and saw Frisch "with both hands full of food-stuffs trying to squeeze through the doorway" while Pickett "was right there

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[6] Pickett argues that appellees' affidavits are void for lack of a notary seal. Upon review, all of the affidavits indicate that oaths were given and they contain the notary's signature and printed name. This reflects substantial and therefore sufficient compliance with R.C. 147.04. *See Stern v. Bd. of Elections of Cuyahoga Cty.*, 14 Ohio St.2d 175, 178, and 182-183 (1968); *Anderson v. Mitchell*, 2014-Ohio-1058, ¶ 8 (8th Dist.).

and was not moving." (Salzgeber aff. at ¶ 8.) Again, he saw no sexual overtones. While Pickett alleged that Frisch's hand sometimes brushed against her backside while the two worked together, this testimony came immediately after Pickett described Frisch as "a very very, very fast cook." (Pickett dep. at 36.) Pickett said this species of brushing occurred when Frisch "would walked [sic] past me really fast." (Pickett dep. at 37.) While Pickett testified that Frisch's "right boob" once touched her shoulder in January 2022, she immediately noted that Frisch "kept walking like she didn't do anything." (Pickett dep. at 42.) Nothing in the record indicates that Frisch lingered, or made a suggestive remark, or leered at Pickett. The contact is fully consistent with the cramped work area behind the counter.

{¶ 56} The brushing incident between Pickett and Delilah Dervic in December 2021 appears no different. In fact, Pickett's deposition testimony suggests this may have been incidental contact accidentally caused by Pickett herself. She testified she was checking out a customer at the cash register (a cramped space behind the counter) and that "when I opened my cash register to step back, my butt touched her [butt]." (Pickett dep. at 53.) Much like the incident in which Frisch's breasts brushed against Pickett's back, here, Dervic "didn't even turn around and look." (Pickett dep. at 53.) While Pickett subjectively chalked this up to Dervic having known "what she had done," (Pickett dep. at 53), it is consistent with contact accidentally initiated by Pickett herself. Moreover, once again Pickett does not contend that Dervic made a suggestive remark or otherwise displayed visual or verbal cues that might transform such contact into sexual harassment. Salzgeber

reviewed video footage in response to Pickett's complaint and "saw one co-worker bumping into another, that was it." (Salzgeber aff. at ¶ 9.)

b. Explicit Photo and Story

{¶ 57} Pickett does not contend that she reported the incident in which Frisch allegedly showed her a sexually explicit photo and told an explicit sexual story. This was a one-time incident, and courts have routinely held that isolated vulgarity of this nature is not grist for a sexual-harassment claim. While certain acts may be "insensitive or obnoxious," R.C. Ch. 4112 is "is not meant to be a general, workplace 'civility code' and the "'sporadic use'" of profanity, "'abusive language . . . jokes, and occasional teasing'" is not sufficient to establish liability on a hostile work environment claim." *Montgomery*, 2024-Ohio-2585, at ¶ 70 (8th Dist.), quoting *Faragher*, 524 U.S. at 788, quoting B. Lindemann & D. Kadue, *Sexual Harassment in Employment Law* 175 (1992). In addition, the language allegedly used by Frisch was not "physically threatening or humiliating," but rather a "mere offensive utterance." *Harris*, 510 U.S. at 23. Moreover, while "graphic and vulgar remarks [are] certainly offensive utterances, . . . the law of sexual harassment is 'not designed to purge the workplace of vulgarity.'" *Chrouser v. DePaul Univ.*, 1998 U.S. Dist. LEXIS 8179, *10 (N.D.Ill. May 20, 1998), quoting *Baskerville v. Culligan Internatl. Co.*, 50 F.3d 428, 430 (7th Cir. 1995). *Cf. Gallagher v. C.H. Robinson Worldwide, Inc.*, 567 F.3d 263, 267 (6th Cir. 2009) (summary judgment reversed where plaintiff "testified that her male co-workers traded sexual jokes and engaged in graphic

discussions about their sexual liaisons, fantasies and preferences in her presence on a daily basis").

{¶ 58} The addition of a photograph to the risqué story does not change the analysis. For example, in *Leslie v. Cumulus Media, Inc.*, 814 F.Supp.2d 1326, 1338 (S.D.Ala. 2011), the female plaintiff received a "message on her cellular phone" from a male coworker that contained a "photograph of his erect penis." *Id.* at 1338. Unlike here, the plaintiff reported the incident to management, which resulted in the coworker resigning under threat of termination. *Id.* at 1339. Putting aside that prompt remedial action, however, the court explicitly held that "one (1) instance of a co-worker sending a sexually explicit e-mail photograph does not arise to 'severe or pervasive.'" *Id.* at 1343. In *Hale v. Dayton*, 2002 Ohio App. LEXIS 474 (2d Dist. Feb. 8, 2002), the plaintiff's male coworker circulated a photo of a naked woman to approximately 15 coworkers, suggesting it resembled the plaintiff. The court found that while this and other isolated incidents were "deplorable, they simply do not constitute sufficiently severe or pervasive harassment to be actionable under Chapter 4112." *Id.* at *15. It emphasized that "[c]ourts have repeatedly held that isolated incidents, unless *extremely* serious, do not constitute a hostile work environment." (Emphasis in original.) *Id.* at *13. *See also Rice v. Cuyahoga Cty. DOJ*, 2005-Ohio-5337, ¶ 32 (8th Dist.) (Unless extremely serious, isolated incidents "'will not amount to discriminatory changes in the terms and conditions of employment.'"), quoting *Faragher* at 788.

{¶ 59} In this case, Frisch's display of an explicit image and her accompanying story were confined to a single occurrence. Moreover, nothing in Pickett's description suggests that Frisch was somehow making unwanted advances during this incident, especially when one considers that both the image and story involved oral sex between men and women. This isolated incident, never even reported to Salzgeber, would not support a finding of severe or pervasive sexual harassment.

c. Orlando Roloa

{¶ 60} We have already noted that courts have repeatedly held that R.C. Ch. 4112, like Title VII, is not meant to be a general civility code. Roloa's isolated remark and gesture, which Pickett did not report to Salzgeber, likewise does not support a finding of severe or pervasive sexual harassment. *See Morris v. Oldham Cty. Fiscal Court*, 201 F.3d 784 (6th Cir. 2000) (finding no severe or pervasive harassment where a coworker made several off-color jokes within the plaintiff's hearing, made a single verbal sexual advance linked to her evaluation, called her "Hot Lips" on one occasion, and commented on her attire).

d. Hostile-Environment Sexual Harassment — Conclusion

{¶ 61} Appellees satisfied their summary judgment burden of identifying specific facts in the record demonstrating their entitlement to summary judgment, i.e., that there were no genuine issues of material fact with respect to Pickett's claims of hostile-environment sexual harassment and that they were entitled to judgment as a matter of law. Pickett then had the "reciprocal burden to point to evidence of

specific facts in the record demonstrating the existence of a genuine issue of material fact for trial." *Dresher*, 75 Ohio St.3d at 293. She failed to do so. While our review is de novo, and we provide no deference to the trial court, we agree with the trial court that when Pickett was required to provide evidence to support her claims in response to appellees' motion for summary judgment, she supplied only inadmissible evidence such as her unsigned, unsworn declaration.[7] "Our review of an order granting summary judgment is limited to the types of evidentiary material allowed pursuant to Civ.R. 56," and "a brief in opposition to summary judgment must be supported by evidentiary material permitted by Civ.R. 56 to be considered on a motion for summary judgment." *Univ. School v. M.F.*, 2025-Ohio-170, ¶ 16 (8th Dist.). Moreover, Pickett's appellate brief contains multiple factual assertions for which she provides no record citations and which apparently were not made below. It is axiomatic that "[w]hile an appellate court's review of the lower court's granting of summary judgment is de novo, . . . it is nevertheless limited to a review of the trial court's record as presented by the parties." *Bradley v. Kijauskus*, 1998 Ohio App. LEXIS 1177, *9 (8th Dist. Mar. 26, 1998). *See also Abram v. Greater*

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[7] "'To constitute a valid affidavit, the statement must be signed by the affiant and notarized.'" *Bertalan v. Bertalan*, 2025-Ohio-1443, ¶ 54, fn. 8 (8th Dist.), quoting *Gurary v. John Carroll Univ.*, 2024-Ohio-3114, ¶ 37-38 (8th Dist.). In *Gurary*, this court wrote that "the trial court did not err or abuse its discretion in refusing to consider Gurary's unsigned, unnotarized 'affidavit' when ruling on the parties' summary judgment motions." *Id.* at ¶ 38. *See also State v. Gibson*, 2023-Ohio-4792, ¶ 23, fn. 2 (8th Dist.) ("The lack of signature indicates the affidavit on its face was not taken under oath before the notary."). Pickett's addition of "under penalty of perjury" to her unsworn declaration does not change the outcome. *See Toledo Bar Assn. v. Neller*, 2004-Ohio-2895, ¶ 24 (writing purportedly signed under penalty of perjury may not be substituted for an affidavit); *State v. Pointer*, 2022-Ohio-1942, ¶ 16 (8th Dist.) (same).

Cleveland Regional Transit Auth., 2002-Ohio-2622, ¶ 53 (8th Dist.) ("Our review is limited to the trial court's record as presented by the parties.").

{¶ 62} Even when we include all proper evidence in our review of the complete record, such as the transcript of Pickett's deposition, and even viewing such evidence most strongly in favor of Pickett, she has failed to come forward with competent, admissible evidence to establish a claim of sexual harassment under applicable law. Her allegations that incidental physical contact with other women working in the cramped confines of the diner resulted from her coworkers' sexual appetites, or was designed to abuse and intimidate her due to her sex, is based solely on her own subjective characterizations. There is a fatal absence of concrete evidence suggesting that such contact was sexualized in any way (e.g., accompanied by suggestive remarks or longing stares) or that it was even intentional. The incidents uniformly occurred while Pickett and the other women were working, and often while working quickly. Some incidents occurred while female coworkers were carrying items and trying to move past Pickett. Even crediting Pickett's descriptions of the mechanics of each contact, nothing objectively supports her characterization of the contact as sexually charged. The incidents of physical contact in cramped quarters do not suggest a work environment that a reasonable person would find sexually hostile or abusive.

{¶ 63} Finally, while Pickett claims (albeit without support in the record) that Frisch is a lesbian, their only sexually charged interaction involved a photo and story of oral sex between women and men. A rational trier of fact could not interpret this

incident as a sexual advance, and even if it were, it would be too isolated to establish a severe or pervasive hostile-work environment. The remark by Roloa is no different; it was likewise isolated and cannot be characterized as severe. Reviewing the entire record under applicable law, the trial court did not err in granting summary judgment to appellees on Pickett's hostile-environment-sexual-harassment claim.

2. Retaliation

{¶ 64} Our review of Pickett's retaliation claim is complicated by her failure to argue that claim in her brief. While her eleventh assignment of error generally contends that the trial court erred by granting summary judgment in favor of appellees, Pickett's brief contains only a passing reference to her retaliatory-discharge claim, i.e., a notation that the claim was included in her properly filed first amended complaint. She does not discuss the legal standards for a retaliation claim under R.C. 4112.02(I), she does not offer any case law on the issue, and she does not offer any argument with respect to critical elements such as adverse action or causation, both of which were argued by appellees below and in their brief. Pickett's reply brief does not cure this deficiency. It likewise offers no case law or argument analyzing facts in the record in light of the legal standards for retaliation.

{¶ 65} App.R. 16(A)(7) requires an appellate brief to include "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." An

appellate court "may disregard an assignment of error presented for review if the appellant fails to identify in the record the error on which the assignment of error is based, fails to cite to any legal authority in support of an argument or fails to argue the assignment separately in the brief[.]" *In re J.Q.-P.*, 2024-Ohio-661, ¶ 41 (8th Dist.), citing App.R. 12(A)(2) ("The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A)."). Moreover, ""'parties cannot simply incorporate by reference arguments that they made to the trial court in their appellate brief."'" *V.C. v. O.C.*, 2021-Ohio-1491, ¶ 87 (8th Dist.), quoting *Young v. Kaufman*, 2017-Ohio-9015, ¶ 44 (8th Dist.), quoting *Deutsche Bank Natl. Trust Co. v. Taylor*, 2016-Ohio-7090, ¶ 14 (9th Dist.).

{¶ 66} We may nevertheless "address the legal arguments in this case to the extent [we deem it] necessary to serve justice and the interests of the parties." *Johnson v. New Direction IRA F.B.O. King C. Lam*, 2018-Ohio-4608, ¶ 10 (8th Dist.). In doing so, we find appellees' causation argument dispositive. To support her retaliation claim, Pickett was required to demonstrate "a causal connection between the protected activity and the adverse employment action." *Blagg*, 2024-Ohio-2579, at ¶ 74 (8th Dist.). "A plaintiff may show the requisite causal connection 'through direct evidence or through knowledge coupled with a closeness in time that creates [a]n inference of causation.'" *Id.* at ¶ 76, quoting *Meyers v. Goodrich Corp.*, 2011-Ohio-3261, ¶ 28 (8th Dist.). "'Close temporal proximity between the

[defendant's] knowledge of the protected activity and the adverse employment action alone may be significant enough to constitute evidence of a causal connection — but only if the adverse employment action occurs "very close" in time after [a defendant] learns of a protected activity.'" *Blagg* at ¶ 76, quoting *Meyers* at ¶ 28, quoting *Clark Cty. School Dist. v. Breeden*, 532 U.S. 268, 273 (2001).

{¶ 67} In *Woods v. Capital Univ.*, 2009-Ohio-5672 (10th Dist.), the protected activity occurred August 7, 2006, and Woods lost his job on September 27, 2006. The appellate court found that "[b]ecause approximately two months elapsed between Capital learning that Woods had engaged in a protected activity and the adverse action, the temporal proximity is not so close that Woods can rely upon timing alone to establish a causal connection." *Id.* at ¶ 50. The court further found that Woods had not "point[ed] to any other evidence that would allow a reasonable finder of fact to infer that engaging in the alleged protected activity caused the adverse action." *Id.* Accordingly, the appellate court found that Woods "failed to create a genuine issue of material fact as to the fourth element of the prima facie case of retaliation." *Id.*

{¶ 68} Here, the facts regarding temporal proximity align with *Woods*. By early March 2022, both Frisch and Dervic were no longer employed at Steve's Doghouse. On May 1 and May 2, 2022 — approximately two months after the alleged harassers Pickett complained about were gone — Salzgeber sent two text messages to Pickett, on two consecutive days, asking if she wanted to be on the work schedule. While Pickett belatedly responded to these messages, with Salzgeber

nevertheless considering her to have voluntarily quit, nothing in the record connects any of Pickett's earlier complaints of sexual harassment with her separation approximately two months after the last possible complaint of sexual harassment regarding Frisch and Dervic.[8] Moreover, she has not pointed to other evidence that would allow a reasonable finder of fact to infer a causal relationship between protected activity and the claimed adverse action. The trial court did not err in granting summary judgment to appellees on Pickett's retaliation claim.

{¶ 69} In sum, the trial court properly granted summary judgment to appellees on Pickett's claims of hostile-environment sexual harassment and retaliation. Pickett's eleventh assignment of error is overruled.

B. First Assignment of Error — Striking Pickett's Second Amended Complaint

{¶ 70} Pickett's first assignment of error contends that the trial court erred when it struck her second amended complaint. Pickett filed her second amended complaint, without seeking leave, on June 21, 2024. This was almost seven months after her attorney filed the first amended complaint on November 28, 2023. It was also shortly before a scheduled mediation and less than two months before the dispositive-motion deadline of August 15, 2024.

{¶ 71} Before turning to the standard of review, we address Pickett's argument that in striking her second amended complaint, this rendered that

[8] We note again that the record does not indicate that Pickett reported the Roloa comment to Salzgeber, which allegedly took place months earlier, in the fall of 2021.

pleading "inaccessible to the Supreme Court of Ohio [and] the Court of Appeal[s] presently[.]" The second amended complaint is in fact included in the record transmitted by the clerk of courts. It is therefore available both for our review and, if necessary, review by the Ohio Supreme Court. We have reviewed the second amended complaint in its entirety.

{¶ 72} Unlike the de novo standard of review applied to the trial court's granting of the motion for summary judgment, we review a trial court's decision on a motion to strike under an abuse-of-discretion standard. *Kebe v. Bush*, 2019-Ohio-4976, ¶ 8 (8th Dist.), citing *Abernethy v. Abernethy*, 2003-Ohio-1528, ¶ 7 (8th Dist.). A trial court "abuses its discretion when it exercises its judgment in an unwarranted way with respect to a matter over which it has discretionary authority." *Hunter v. Troutman*, 2025-Ohio-366, ¶ 64 (8th Dist.), citing *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. "The term abuse of discretion implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *Hunter* at ¶ 64, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983).

{¶ 73} We note that Pickett failed to attach the trial court's decision on the motion to strike to her notice of appeal. The issue was nevertheless hotly contested below and referenced in the trial court's decision granting appellees' motion for summary judgment. Under these specific facts, we do not view the failure to attach the trial court's September 11, 2024 journal entry as a jurisdictional defect. *See, e.g., N. Chem. Blending Corp. v. Strib Industries*, 2018-Ohio-3364, ¶ 22-25 (8th Dist.).

{¶ 74} More critically, however, and as with her retaliation claim, Pickett fails to cite legal authority in support of her arguments, this time failing to argue that the trial court's ruling was unreasonable, arbitrary, or otherwise constituted an abuse of discretion. As appellees point out, she "instead alleges conspiracies and various federal and state crimes against the court and the two attorneys involved." (Appellees' brief at p. 27.) We nevertheless have reviewed Pickett's second amended complaint under the applicable standard and find no abuse of discretion.

{¶ 75} We have already described Pickett's second amended complaint in considerable detail. It alleged the same employment causes of action as her original complaint and her first amended complaint, i.e., hostile-environment sexual harassment and retaliation. Its considerable added length was attributable to Pickett's attacks on and criminal allegations against her own counsel and counsel for appellees, as well as her inclusion of numerous text message screenshots and accompanying narratives. The attacks are appropriately characterized as scandalous. The screenshots and associated commentary, apparently included to support her sexual-harassment and retaliation allegations, were materials that could be included in Pickett's evidentiary submissions in opposition to summary judgment or otherwise. It was not necessary to include them in a complaint, especially an amended complaint that did not add or modify causes of action.

{¶ 76} In striking the second amended complaint, the trial court reasoned in its journal entry that Pickett had filed it without leave and that it contained several allegations unrelated to her employment. It also held that the second amended

complaint raised the same causes of action as the first amended complaint, so that striking it would not prejudice Pickett. The trial court did not abuse its discretion. Pickett's first assignment of error is overruled.

C. Fourth Assignment of Error — Constitutional Rights / United States Code

{¶ 77} In her fourth assignment of error, Pickett contends the trial court denied her rights to be heard in the court of law under the United States Constitution and violated her rights under 18 U.S.C. 242. Her arguments are somewhat difficult to discern. She cites to no specific constitutional provision. While she cites a handful of cases reciting general precepts regarding deprivation of constitutional or statutory rights under color of law, she does not link these precepts to any specific events occurring during her employment. Her claims below did not allege constitutional violations or violations of federal law.

{¶ 78} Pickett alleges in her brief that her "rights were denied because of the color of her skin and being a lighter skin African American Female." With respect to her status as an African American, there were no race-related causes of action before the trial court. "'[A] party cannot present new arguments for the first time on appeal that were not raised below[.]'" *Johnson v. State Farm Mut. Auto. Ins. Co.*, 2024-Ohio-3187, ¶ 24 (8th Dist.), quoting *State v. Moore*, 2020-Ohio-3459, ¶ 58 (8th Dist.).

{¶ 79} With respect to her status as a woman, to the extent Pickett is arguing that the trial court "denied her rights to be heard" by granting summary judgment

to appellees on her claim of hostile-environment sex discrimination, that argument is moot given our disposition of Pickett's eleventh assignment of error.

{¶ 80} Finally, to the extent Pickett is alleging some other violation of constitutional rights or violation of the U.S. Code, she has not identified in the record the error on which the assignment of error is based. We therefore disregard all other aspects of this assignment of error. *See In re J.Q.-P.*, 2024-Ohio-661, at ¶ 41 (8th Dist.). *See also Rodriguez v. Rodriguez*, 2009-Ohio-3456, ¶ 7 (8th Dist.) ("[I]t is not the duty of an appellate court to search the record for evidence to support an appellant's argument as to any alleged error."); *In re Q.S.*, 2023-Ohio-712, ¶ 103 (8th Dist.); *Story v. Story*, 2021-Ohio-2439, ¶ 30 (8th Dist.) (appellate court not obligated to construct or develop arguments for appellant or to guess at undeveloped claims); *Strauss v. Strauss*, 2011-Ohio-3831, ¶ 72 (8th Dist.) ("'If an argument exists that can support this assigned error, it is not this court's duty to root it out.'"), quoting *Cardone v. Cardone*, 1998 Ohio App. LEXIS 2028, *22 (9th Dist. May 6, 1998); *Bertalan*, 2025-Ohio-1443, at ¶ 77 (8th Dist.).

{¶ 81} Accordingly, Pickett's fourth assignment of error is overruled.

D. Seventh Assignment of Error — Fraud

{¶ 82} In her seventh assignment of error, Pickett alleges that the court erred in failing to find that appellees' counsel tampered with evidence in violation of R.C. 2921.12. This dispute relates to the discrepancies in the date and time stamps on the various text message screen captures. Pickett's first amended complaint contained no R.C. 2307.60(A)(1) allegations relating to civil liability for a criminal

act. *See Buddenberg v. Weisdack*, 2020-Ohio-3832, ¶ 11. To the extent Pickett's second amended complaint could be construed as raising such allegations against appellees' counsel, we have already concluded that the trial court did not abuse its discretion in striking the second amended complaint. Accordingly, Pickett's seventh assignment of error is moot.[9]

E. Second, Third, Fifth, Sixth, Eighth, Ninth, Tenth, and Twelfth Assignments of Error

{¶ 83} We agree with appellees that Pickett's remaining assignments of error, specifically assignments of error Nos. two, three, five, six, eight, nine, ten, and twelve, all accuse the trial judge of misconduct that would (if accurate) potentially warrant disqualification. This includes, inter alia, accepting a bribe, failing to be impartial, engaging in a civil conspiracy against her, violating the rules of judicial conduct, and otherwise violating state and federal law. We find no merit to any of these assignments of error.

{¶ 84} In *Fisher v. Fisher*, 2011-Ohio-5251 (8th Dist.), this court explained:

> [C]hallenges of judicial prejudice and bias are not properly brought before an appellate court. "Rather, appellant must make such a challenge under the provisions of R.C. 2701.03, which requires an affidavit of prejudice to be filed with the Supreme Court of Ohio." *Baker v. Ohio Dep't of Rehab. & Corr.*, 144 Ohio App.3d 740, 754, 2001-Ohio-2553, 761 N.E.2d 667. Only the chief justice of the Ohio Supreme Court or his [or her] designee has the authority to determine a claim that a common pleas court judge is biased or prejudiced. *Beer v. Griffith* (1978), 54 Ohio St.2d 440, 441-442, 377 N.E.2d 775. *Courts*

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[9] To the extent Pickett's seventh assignment of error accuses the trial court judge of complicity in counsel's alleged tampering, this argument is addressed in our discussion below regarding allegations of judicial misconduct.

> *of appeals lack authority to void the judgment of a trial court on such basis. Id.*

(Emphasis added.) *Fisher* at ¶ 43. *See also Bertalan*, 2025-Ohio-1443, at ¶ 62-64 (8th Dist.); *Bradley v. Bradley*, 2021-Ohio-2514, ¶ 86 (8th Dist.); *Johnson v. U.S. Title Agency, Inc.*, 2020-Ohio-4056, ¶ 101 (8th Dist.) (chief justice of the Ohio Supreme Court, or his or her designee, has exclusive jurisdiction to determine bias or prejudice of judge); *Gentile v. Gentile*, 2013-Ohio-1338, ¶ 58 (8th Dist.); *Krupar v. Krupar*, 1994 Ohio App. LEXIS 5277, *4 (8th Dist. Nov. 23, 1994).

{¶ 85} In general, therefore, "appellate courts have 'no authority to determine a claim that a trial judge is biased or prejudiced against a defendant and no authority to void a trial court's judgment based on a claim that the trial judge is biased or prejudiced.'" *State v. Bastawros*, 2024-Ohio-2809, ¶ 17 (8th Dist.), quoting *State v. Frazier*, 2017-Ohio-8307, ¶ 16 (8th Dist.).

{¶ 86} We note, however, that "[a]lleged due-process violations . . . may be addressed on appeal." *State v. Hunt (In re Thomakos)*, 2020-Ohio-6874, ¶ 4, citing *State v. Jackson*, 2016-Ohio-5488, ¶ 43. *See also Bastawros* at ¶ 19; *State v. Munoz*, 2023-Ohio-1895, ¶ 24 (8th Dist.); *Johnson* at ¶ 101. In that regard, however, a complaining litigant's burden is steep. This court has previously held:

> Opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Importantly, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. Typically, [a party] must demonstrate the bias

> through linking the impermissible commentary to the decisions rendered at trial. If the [party] demonstrates that the trial was infected with judicial bias, the remedy is a new trial.

(Cleaned up.) *Bastawros* at ¶ 19. *See also State v. Browning*, 2023-Ohio-1887, ¶ 29 (8th Dist.).

{¶ 87} Viewing the record as a whole, and notwithstanding Pickett's attacks on the trial court, "we see nothing to suggest that the trial court harbored a hostile feeling of ill will toward" Pickett. *State v. LaMar*, 2002-Ohio-2128, ¶ 36. The record instead suggests that the trial court, tasked with handling hotly contested issues, met that challenge with restraint and patience. Nothing here suggests a due-process violation.

{¶ 88} Finally, while Pickett asserts on appeal that the trial judge violated 42 U.S.C. 1983, we sit in this case as a reviewing court. There is no Section 1983 trial court decision for us to review. *See Patterson & Simonelli v. Silver*, 2004-Ohio-3028, ¶ 38-41 (11th Dist.) (rejecting appellant's claim that the trial court judge who ruled against him violated 42 U.S.C. 1983, and further noting that a judge who possesses jurisdiction over a controversy is not civilly liable for actions taken in his or her judicial capacity). *See also White v. Goldsberry*, 1992 Ohio App. LEXIS 6285, *8 (4th Dist. Dec. 4, 1992) (judicial immunity bars Section 1983 claims against judges unless they act in clear absence of jurisdiction).

{¶ 89} Pickett's second, third, fifth, sixth, eighth, ninth, tenth, and twelfth assignments of error are overruled.

{¶ 90} Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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DEENA R. CALABRESE, JUDGE

EILEEN A. GALLAGHER, A.J., and
MICHELLE J. SHEEHAN, J., CONCUR