

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

|                           |   |            |
|---------------------------|---|------------|
| TIM BUNDY, ET AL.,        | : |            |
|                           | : |            |
| Plaintiffs-Appellants,    | : | No. 115866 |
|                           | : |            |
| v.                        | : |            |
|                           | : |            |
| ROCK ENTERTAINMENT GROUP, | : |            |
| ET AL.,                   | : |            |
|                           | : |            |
| Defendants-Appellees.     | : |            |

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: September 3, 2026**

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Civil Appeal from the Cuyahoga County Common Pleas Court  
Case No. CV-24-100802

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***Appearances:***

Michael T. Conway, *for appellants.*

Taft Stettinius & Hollister LLP, Lynn Rowe Larsen, and  
Kelsey Hughes-Blaum, *for appellees.*

MICHELLE J. SHEEHAN, A.J.:

{¶ 1} Plaintiffs-appellants Tim Bundy (“T. Bundy”) and Ruth Bundy (“R. Bundy”) (collectively known as “Appellants”) appeal from the trial court’s order granting summary judgment in favor of defendants-appellees Rock Entertainment Group (“REG”) and Cavaliers Operating Company, LLC (“COC”) (collectively known

as “Appellees”). In granting Appellees’ motions for summary judgment, the trial court found that “no genuine issues of material fact exist.”

{¶ 2} It is this entry from which Appellants appeal, claiming that the trial court (1) applied an erroneous summary judgment standard in its judgment entry, (2) erred by granting summary judgment in favor of the Appellees, and (3) erred by failing to exclude the expert report and testimony of Appellees’ defense expert. Having thoroughly reviewed the record and applicable law, we affirm the trial court’s judgment.

## **I. Relevant Undisputed Facts and Procedural History**

### **A. Background**

{¶ 3} T. Bundy and R. Bundy are married and, for a number of years, held multiple season tickets for the Cleveland Cavaliers and Cleveland Monsters. Over the years, they have attended numerous events held at Rocket Arena (formerly known as Rocket Mortgage Fieldhouse). Rocket Arena is operated by COC and is home to the Cleveland Cavaliers and the Cleveland Monsters. REG holds itself out as a separate company, considering itself an “umbrella” entity for certain teams and venues, including the Cleveland Cavaliers, Cleveland Monsters, and Rocket Arena.

{¶ 4} Since the early 2000’s, R. Bundy has considered herself disabled and is unable to walk long distances. In 2015, she started to use a mobility scooter, particularly when travelling long distances. She stated that she uses her scooter at Rocket Arena and that she did not feel discriminated against due to her disability

but did feel that employees for the organization could have given her more assistance boarding elevators at the arena.

### **B. The November 2023 Cavaliers-Lakers Game Incident**

{¶ 5} In November 2023, Appellants attended a basketball game at Rocket Arena between the Cleveland Cavaliers and Los Angeles Lakers. They watched the game from their seats located on the ADA platform in section 202. During the fourth quarter of the game, T. Bundy alleged that there were concession workers from Aramark standing on the platform behind where he and his wife were sitting. He stated that he did not mind them standing there, so long as they were not bumping into them.

{¶ 6} At some point during the night, in the section a few rows over from Appellants' section, another fan became unruly. T. Bundy described the fan as "[p]robably the most unruly patron I've ever seen inside that arena. And I've been going there for almost 30 years at the time." Cleveland Police intervened to remove the fan. During the commotion, T. Bundy stated that the Aramark concession workers began bumping into him and his wife's scooter. T. Bundy acted as a buffer between them and R. Bundy's scooter so she would not get bumped into. The whole incident lasted about ten minutes. T. Bundy stated that neither himself nor R. Bundy were injured during the incident.

{¶ 7} Following the game, T. Bundy stated that he reported this incident to multiple Cavaliers representatives and that nobody got back to him. On December 4, 2023, T. Bundy sent an email to his ticket representative Troy Lowe

(“Lowe”) to report to him what had occurred. In the email, T. Bundy complained to Lowe that Aramark concession employees were watching the game on the ADA platform and he was bothered that during the incident with the unruly patron, people were bumping into his disabled wife and her mobility scooter. T. Bundy also made it clear that this incident was “NOT a reflection on [Lowe] or anyone in Cavs United nor it is [sic] a reflection of the Guest Services Team[.]”

### **C. T. Bundy’s Inappropriate Behavior Towards Representatives of SeatGeek and Rocket Arena Security Personnel**

#### **1. SeatGeek Interactions.**

{¶ 8} In the months that followed, T. Bundy made numerous complaints to the SeatGeek organization, which is the primary ticket provider for Rocket Arena. These complaints did not involve allegations concerning discrimination. Bayley Haberman (“Haberman”), the vice president of ticketing operations for the Cavaliers, explained that as their primary ticketing provider, any ticketed event at the arena is “built and created on the SeatGeek ticketing system, which is then sold via [their] website, which leads you to a link on seatgeek.com.”

{¶ 9} T. Bundy has an account with SeatGeek. On March 19, 2024, a representative from SeatGeek emailed Haberman to notify her that T. Bundy had contacted SeatGeek multiple times, often using abusive and inappropriate language towards their staff, and that T. Bundy had said that “he intends to continue to harass [their] agents in the future should he deem them unhelpful, unprofessional, unknowledgeable, etc.”

**{¶ 10}** The following day, SeatGeek sent Haberman a nonexhaustive list of examples concerning their recent interactions with T. Bundy. The email listed the following incidents:

- February 8, 2024: T. Bundy spoke to an agent at SeatGeek concerning an issue he was having with exchanging his Cavs tickets. During the interaction, there appeared to be a miscommunication between the two, to which T. Bundy responded, “No, just transfer me because you don’t understand English.” T. Bundy also told the agent: “You’ve made it very clear you’re too stupid to assist me, transfer me to a supervisor.”
- March 9, 2024: T. Bundy spoke to another agent named Jose, concerning issues he was having editing the price of his tickets. During their conversation Jose advised T. Bundy to contact his Cavaliers’ representative. At some point T. Bundy asked for a supervisor and said to Jose, “Alright Jose, you just lost my \*\*\*\*\* respect. I don’t give a \*\*\*\* what you think the supervisor will say.”
- March 10, 2024: T. Bundy made several phone calls to SeatGeek on this date. SeatGeek advised that T. Bundy had been reaching out to them on all of their platforms, demanding to speak to supervisors. In reference to one SeatGeek agent mistakenly referring to him as Ted, rather than Tim, T. Bundy said about the agent, “Her mother giving birth to her was a mistake.” T. Bundy told another agent, “I don’t care about your stupid opinion on this matter.” T. Bundy also used the word “bull\*\*\*\*.” The agent advised T. Bundy that they do not tolerate that language, to which T. Bundy replied: “I’m speaking English, something most people there don’t understand.”

## **2. Security Personnel Interactions**

**{¶ 11}** On March 29, 2024, Appellants attended a basketball game at Rocket Arena between the Cavaliers and 76ers. Following the game, T. Bundy called security concerning an incident that occurred at the elevators when he and his wife were exiting the arena. T. Bundy stated that he was attempting to help his wife get

on the elevator with her scooter, which then led to him being physically threatened by another patron, while security stood by and did nothing. During the call to security, T. Bundy called the security department “an abortion.”

{¶ 12} T. Bundy then sent a text message to Lowe concerning the incident, stating that he was not happy and that he could “CARE LESS IF WE GO TO ANOTHER GAME & RUTH FEELS THE SAME F\*\*\*\*\* WAY!!!” The following day, T. Bundy followed up with a series of messages beginning with, “NEXT MORNING YEP WE ARE STILL F\*\*\*\*\* PISSED!!!” T. Bundy advised that he had “[j]ust cussed out security.” He also told Lowe that the “security team does NOTHING when people cut off ADA people getting on an elevator. REAL GOOD LOOK!!!”

{¶ 13} On March 31, 2024, T. Bundy also sent a message to the personal Facebook account of Jennifer Pfeister (“Pfeister”), chief of security for Rocket Mortgage Fieldhouse, advising her of this incident. In the message, he referred to the security staff as blatantly incompetent, inept, and lazy. He also accused the security officers at the elevators of failing to assist them and making it “harder for ADA people by doing nothing.”

#### **D. Ban and Revocation of Tickets**

{¶ 14} Tickets purchased for events at Rocket Arena indicate on them that the “ticket is a revocable license.” The ticket language also incorporates the Rocket Arena’s Code of Conduct and the NBA Code of Conduct. Rocket Arena’s Code of Conduct provides that guests that do not comply with it “will be subject to penalty including but not limited to, refusal to allow entry into the Rocket Arena, ejection

without refund, revocation of all tickets, and/or prevention from attending all future events at Rocket Arena.” The NBA’s Code of Conduct includes similar language.

**{¶ 15}** Rocket Arena’s Code of Conduct requires guests to treat all “staff and personnel in a professional and courteous manner, including speaking with respect and respecting the personal space of all staff and personnel” and “shall not engage in unruly, illegal, disruptive harassing, threatening or violent behavior” or use “foul, abusive, vulgar, profane, obscene or demeaning language or gestures.” The NBA’s Code of Conduct similarly provides that “[g]uests will enjoy the basketball experience free from disruptive behavior, including foul or abusive language and obscene gestures.” It also provides that “[g]uests will comply with requests from arena staff regarding arena operations and emergency response procedures.” T. Bundy acknowledged that he was required to comply with these codes of conduct as a ticket holder.

**{¶ 16}** On April 9, 2024, T. Bundy was banned from Rocket Arena due to his conduct. Pfeister sent him a letter notifying him that he was prohibited from entering Rocket Arena “or being present on its premises for any event or activity until further notice.” The notice also advised him that any tickets to events or activities at the arena associated with him had been revoked and that he would be receiving a refund. It further notified him that REG was willing to revisit this issue, provided that he submit a written letter after June 30, 2026. Pfeister explained that the reason for the ban was due to T. Bundy’s violation of Rocket Arena’s and the NBA’s Codes of Conduct. Pfeister stated, “Your continued disrespect for our team

members has left us with no choice but to take action. We must prioritize the safety and wellbeing of our guests and team members.”

### **E. Procedural History**

{¶ 17} On July 17, 2024, T. Bundy filed a lawsuit against REG alleging disability discrimination against himself and R. Bundy. REG moved to dismiss T. Bundy’s complaint, alleging that T. Bundy lacked standing and failed to state a claim for relief. Shortly thereafter, Appellants filed an amended complaint adding R. Bundy as a co-plaintiff and including additional causes action of retaliation and negligence. The amended complaint also added COC as a co-defendant.

{¶ 18} On August 29, 2025, Appellees filed a motion for summary judgment. As an exhibit to their motion for summary judgment, Appellees included an affidavit of, and an expert report authored by Professor Ruth Colker (“Colker”) from the Moritz College of Law at The Ohio State University. Appellants responded in opposition to Appellees’ motion for summary judgment, as well as filing a motion to exclude Colker’s expert report and testimony.

{¶ 19} On October 30, 2025, the trial court granted Appellees’ motion for summary judgment, without ruling on Appellants’ motion to exclude Colker’s expert report and testimony.

{¶ 20} Appellants filed a notice of appeal from each of the trial court’s order granting summary judgment in favor of Appellees. Appellants raise the following assignments of error for our review:

1. The trial court reversibly erred to the prejudice of the Appellants when it granted the Appellee[s'] motion for summary judgment using an erroneous MSJ review standard that does not apply the law, to wit: "Upon review of the arguments and evidence presented, the court finds no genuine issue of material fact exist. Therefore, defendant's motion for summary judgment is granted."
2. The Appellees are not entitled to summary judgment as a matter of law on Appellants[] retaliation claim and the trial court reversibly erred to the prejudice of the Appellants in granting the Appellee[s'] motion for summary judgment.
3. Appellants[] motion to exclude the testimony of defense expert witness Ruth Colker offered in support of MSJ should have been granted and to the extent the trial court relied on her testimony that reliance was prejudicial to the Appellant[s] and a reversible error.

## **II. Law and Argument**

### **A. First Assigned Error for Review — Judgment Entry**

{¶ 21} In their first assigned error for review, Appellants claim that the trial court failed to use the correct standard of review for summary judgment because its judgment entry only referenced "no genuine issues of material fact exists" and fails to indicate that Appellees are "entitled to judgment as a matter of law." We disagree.

{¶ 22} The trial court's judgment granting the Appellees' motion for summary judgment provides, in total:

Upon review of the arguments and evidence presented, the court finds no genuine issues of material fact exist. Therefore, Defendants' motion for summary judgment is granted. Final court costs assessed to the Plaintiff(s).

{¶ 23} It is well-settled that "a trial court is not required to issue a written opinion containing findings of fact and conclusions of law when ruling on a motion for summary judgment." *Solomon v. Harwood*, 2011-Ohio-5268, ¶ 61 (8th Dist.),

citing *Tiefel v. Gilligan*, 40 Ohio App.2d 491, 495 (10th Dist. 1974). “Rather, the trial court need only issue a judgment entry that contains a ‘clear and concise pronouncement of the Court’s judgment’ and ‘sufficient pronouncement of its decision upon which to review the issues raised by appellants’ appeal.” *Powers v. Ferro Corp.*, 2002-Ohio-2612, ¶ 30 (8th Dist.), quoting *Rogoff v. King*, 91 Ohio App.3d 438 (8th Dist. 1993). We have explained that this rule is “rooted in common sense, because ‘we afford no deference to the trial court’s decision and independently review the record to determine whether summary judgment is appropriate.’” *Dean v. Liberty Mut. Ins.*, 2018-Ohio-3042, ¶ 9 (8th Dist.), quoting *Jackson v. Glidden Co.*, 2007-Ohio-277, ¶ 8 (8th Dist.).

**{¶ 24}** Appellants do not direct us to any authority requiring the trial court to use the phrase “entitled to judgment as a matter of law” in its judgment entry granting summary judgment. Rather, we have held that a trial court’s judgment entry simply stating “Defendant’s MSJ is granted” was “sufficient to apprise the parties of the court’s judgment.” *Powers* at ¶ 31. As such, the trial court was not required to include in its judgment entry a phrase specifically stating that Appellees were “entitled to judgment as a matter of law.”

**{¶ 25}** Appellants further argue that the trial court’s judgment indicates that it improperly weighed the witnesses’ credibility against Appellants, the nonmoving parties. We disagree. The trial court’s judgment entry does not indicate that it weighed the credibility of any witness. Nonetheless, this point is irrelevant since even if the trial court had weighed the evidence against Appellants, we afford no

deference to the trial court's decision and review the record independently to determine whether summary judgment was appropriate, which we do below, concerning Appellants' second assignment of error. *See Dean* at ¶ 9.

{¶ 26} For these reasons, Appellants' first assignment of error is overruled.

## **B. Second Assigned Error for Review — Summary Judgment**

{¶ 27} In their second assigned error for review, Appellants claim that the trial court erred in granting summary judgment in favor of Appellees with respect to Appellants' retaliation claim.<sup>1</sup> Appellants claim that there exists a genuine issue of material fact to support its claim that Appellees revoked their season tickets and banned them from Rocket Arena in retaliation for T. Bundy's opposition to what Appellants believe to be public-access-accommodation discrimination on the basis of R. Bundy's disability. After reviewing the facts and applicable law, we find that the Appellants failed to adequately demonstrate a genuine issue of material fact to support its claim.

### **1. Summary Judgment Standard**

{¶ 28} "An appellate court reviews a trial court's grant of summary judgment de novo." *Kimolos Acquisitions, L.L.C. v. Taylor Rd. Synagogue*, 2026-Ohio-2544, ¶ 19 (8th Dist.), citing *Tatarunas v. Progressive Cas. Ins. Co.*, 2025-Ohio-4372, ¶ 20 (8th Dist.), citing *Warthog Mgt. LLC v. Fares*, 2024-Ohio-2065, ¶ 17 (8th Dist.). Pursuant to Civ.R. 56(C), a party is entitled to summary judgment if "the pleadings,

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<sup>1</sup> While Appellants alleged three separate causes of action in its amended complaint below, on appeal, Appellants only challenge the trial court's summary judgment order with respect to their retaliation claim.

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.” “The party moving for summary judgment bears the burden of demonstrating that no material issues of fact exist for trial.” *Edvon v. Morales*, 2018-Ohio-5171, ¶ 17 (8th Dist.), citing *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996).

{¶ 29} Summary judgment is appropriate where the “record provides ‘(1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, who is entitled to have the evidence construed most strongly in his or her favor.’” *Univ. School v. M.F.*, 2025-Ohio-170, ¶ 11 (8th Dist.), quoting *Bohan v. McDonald Hopkins, L.L.C.*, 2021-Ohio-4131, ¶ 19 (8th Dist.), citing *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679 (1995), paragraph three of the syllabus.

## **2. Applicable Law — Retaliation**

{¶ 30} Retaliation is prohibited by R.C. 4112.02(I) which prohibits

any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

**{¶ 31}** R.C. 4112.02(G) prohibits, in relevant part, the following unlawful discriminatory practice:

For any proprietor or any employee, keeper, or manager of a place of public accommodation to deny to any person, except for reasons applicable alike to all persons regardless of . . . disability . . . the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.

**{¶ 32}** It has been well-recognized that when interpreting and deciding claims brought under R.C. 4112.02, Ohio courts may rely on federal anti-discrimination case law. *Brown v. O'Reilly Auto Stores, Inc.*, 2015-Ohio-5146, ¶ 22 (8th Dist.), citing *Mauzy v. Kelly Servs., Inc.*, 75 Ohio St.3d 578, 582 (1996).

**{¶ 33}** In order to establish a prima facie case of retaliation under R.C. 4112.02(I), the plaintiff must demonstrate the following four elements: “(1) claimant engaged in a protected activity; (2) claimant’s engagement in the protected activity was known to the opposing party; (3) the opposing party thereafter took adverse action against the claimant; and, (4) there exists a causal connection between the protected activity and the adverse action.” *Hughes v. Miller*, 2009-Ohio-963, ¶ 29 (8th Dist.), citing *Greer-Burger v. Temesi*, 2007-Ohio-6442, ¶ 13, citing *Canitia v. Yellow Freight Sys., Inc.*, 903 F.2d 1064, 1006 (6th Cir. 1990), as modified by fn. 2.

**{¶ 34}** If a plaintiff successfully establishes a prima facie case for retaliation, the burden shifts to the defendant to “articulate a legitimate reason for its action.” *Valentine v. Westshore Primary Care Assoc.*, 2008-Ohio-4450, ¶ 111 (8th Dist.), citing *Balmer v. HCA, Inc.*, 423 F.3d 606, 614 (6th Cir. 2005); *Morris v. Oldham*

*Cty. Fiscal Court*, 201 F.3d 784, 793 (6th Cir. 2000). If the defendant meets this burden, the burden shifts back to the plaintiff to demonstrate that the articulated reason was pretextual. *Id.*

### **3. Analysis**

**{¶ 35}** The first two elements of a *prima facie* case require Appellants to demonstrate that they were engaged in protected activity and that this activity was known to Appellees. “R.C. 4112.02(I) protects two types of activities: participation and opposition.” *Brown*, 2015-Ohio-5146, at ¶ 32 (8th Dist.). Participation activity includes “making a charge, testifying, assisting, or participating in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Ohio Revised Code.” *Id.* Opposition activity, on the other hand, “involves opposing unlawful discriminatory practices.” *Id.*

**{¶ 36}** Appellants make no allegation that they were involved in participation activity. Rather, Appellants allege that T. Bundy was engaged in opposition activity. In support, they direct us to (1) a complaint T. Bundy made to Pfeister via a Facebook message sent on March 31, 2024, and (2) a November 2024 complaint T. Bundy made following a Cavaliers-Lakers game that Appellants had attended, complaining that Aramark workers were standing on the ADA platform and bumping into him and his wife’s scooter. As such, Appellants allege that these complaints amount to protected opposition activity for which they were the subject of retaliation by the Appellees.

{¶ 37} After a thorough review of the record, including the two complaints to which Appellants direct us, we find that neither complaint, as a matter of law, falls under the umbrella of protected opposition activity as set forth in R.C. 4112.02(I).

**a. The March 31, 2024 Facebook Complaint**

{¶ 38} To be engaged in protected opposition activity, the “““plaintiff must make an overt stand against suspected illegal discriminatory action.””” *Grim v. Cleveland Clinic Found.*, 2023-Ohio-713, ¶ 28 (8th Dist.), quoting *Valentine*, 2008-Ohio-4450, at ¶ 113 (8th Dist.), quoting *Coch v. GEM Indus.*, 2005-Ohio-3045, ¶ 32 (6th Dist.), quoting *Comiskey v. Automotive Industry Action Group*, 40 F.Supp.2d 877, 898 (E.D.Mich. 1999). As such, “[v]ague charges of discrimination do not invoke the protection of law.” *Valentine* at ¶ 113, quoting *Coch* at ¶ 32, citing *Booker v. Brown & Williamson Tobacco Co.*, 879 F.2d 1304, 1313 (6th Cir. 1989).

{¶ 39} The March 31, 2024 Facebook message T. Bundy sent to Pfeister, provides, in full:

Hi Jennifer I don't know if you check this often but wanted to bend your ear on an issue at RMFH. I am a 38 year season ticket holder & have attended EVERY game this year. Because of your staff & their blatant incompetency we don't want to go back. My wife uses a mobility scooter & many times has had trouble getting on an elevator at the 3 bank by 205 leaving a game & your officers do not assist at all in fact they make it harder for ADA people by doing nothing. The ONLY thing your officers do there is push the nitton [sic] to call in [sic] elevator to come when one leaves. Had a MAJOR problem last night when people crashed the elevator in front of others in wheelchairs & on crutches with your officer doing NOTHING about it. I was in the middle of getting my wife on I tried stopping these people to let the ones I previously mentioned on the elevator I got cussed at & threatened while your officer did NOTHING!! This is not the 1st time this has happened [sic] because of your staff's ineptness & laziness but it will be the last without

someone from your excuse of a security staff hearing about it. I doubt this will be taken seriously as most complaints at that place are not taken seriously but wanted to pass it on. I called your staff about it they already blamed the girl working there Friday night when in truth that is the norm there for every game no matter who is there that makes it a training issue which your directors screwed up. Feel free to message me back or call me at [redacted] if you do so wish. Thank you.

BTW it wasn't just Friday's game we had the issue its EVERY game we use those elevators to leave by multiple officers of yours. After Friday we had enough of the laziness of your staff [sic]

{¶ 40} The thrust of T. Bundy's complaint focuses on what he believes to be the security staff's "blatant impotency," "ineptness & laziness" for failing to assist his wife at the elevator located in section 205. At no point in this Facebook message does T. Bundy allege that either he or his wife had been unlawfully discriminated against based on R. Bundy's disability nor does he accuse the security staff of engaging in any unlawful discriminatory actions.

{¶ 41} This message alone is insufficient to constitute protected opposition activity. *See Brown*, 2015-Ohio-5146, at ¶ 32 (8th Dist.), quoting *Coch*, 2005-Ohio-3045, at ¶ 32 (6th Dist.), quoting *Weaver v. Ohio State Univ.*, 71 F.Supp.2d 789, 793-794 (S.D. Ohio 1998) (recognizing that ""complaints concerning unfair treatment in general which do not specifically address discrimination are . . . insufficient to constitute protected activity."""). In *Brown*, we found that an employee claiming retaliation in an employment discrimination had not engaged in protected activity, recognizing that "[a]n employee who does not complain of unlawful discriminatory conduct, and only complains generally about job

conditions, has not engaged in a protected activity.” *Id.* at ¶ 34, citing *Canady v. Rekau & Rekau, Inc.*, 2009-Ohio-4974, ¶ 41 (10th Dist.).

{¶ 42} Here, T. Bundy’s Facebook message does not specifically allege that any discriminatory actions had occurred. *See Barber v. CSX Distrib. Servs.*, 68 F.3d 694, 701-702 (3d Cir. 1995) (holding that a letter sent by an employee to Human Resources complaining about “unfair treatment in general and expresses . . . dissatisfaction with the fact that someone else was awarded the position, but . . . does not specifically complain about age discrimination” was not protected activity).

{¶ 43} Since T. Bundy’s March 31, 2024 Facebook message to Pfeister does not specifically allege discrimination, it cannot be considered protected activity nor could Appellees have reasonably believed that this message was bringing to their attention an unlawful discriminatory action. As such, this message is insufficient to support either of the first two elements of a *prima facie* case for retaliation.

### **b. The November 2023 Complaint**

{¶ 44} Appellants also direct us to a complaint T. Bundy made to a member of the Cavaliers corporate office, A.J. Bondi (“Bondi”), following an experience he had at a Cavalier-Lakers game in November 2023. This complaint was memorialized in an email Bondi sent to three other members of the Cavaliers organization on November 26, 2023. Appellants direct us to this email, which reads, in total:

Hello. So Bundy has texted me a couple times. I guess he had a bad experience last night — he said that Aramark team members were standing on the platform behind them and getting too close to Ruth’s

scooter (he said pushing into the scooter). He had sent me the picture of the sign that says “no standing on the ADA platform.” I’m not sure if you can talk to the usher or if you wanted to have someone keep an eye on that platform.

**{¶ 45}** There is nothing in this email indicating that T. Bundy had made a complaint concerning that R. Bundy had been unlawfully discriminated against due to her disability. Rather, shortly after Bondi’s email had been sent, on December 4, 2023, T. Bundy sent an email to Lowe to advise him of this incident in which he tells Lowe: “Troy you know all too well this is NOT a reflection of you or anyone in Cavs United nor it is [sic] a reflection of the Guest Services Team just sad how 1 department with a low regard for its patrons can tarnish how an organization can be viewed.” There is nothing in these complaints in which T. Bundy alleges that R. Bundy had been discriminated against due to her disability.

**{¶ 46}** T. Bundy does not direct us to any evidence demonstrating that he had lodged a complaint concerning unlawful public-access-accommodation discrimination based on his wife’s disability. Neither the March 31, 2024 Facebook message he made to Pfeister nor his complaints following the November 2023 Cavaliers-Lakers game allege unlawful discriminatory conduct. Rather, these complaints tend to focus on what he believed to be the security staff’s laziness and incompetence. As such, as a matter of law, they cannot be construed as protected opposition activity.

**{¶ 47}** Appellants have failed to demonstrate the threshold element to establish a prima facie case for retaliation. Particularly, they failed to demonstrate

that T. Bundy was engaged in protected activity that could have formed a basis for Appellants' retaliation claim. It is therefore not necessary for us to engage in the burden-shifting analysis since Appellants failed to meet their initial burden of demonstrating a prima facie case for retaliation.

{¶ 48} For this reason, we find that the trial court did not err in granting Appellees' motion for summary judgment. Accordingly, Appellants' second assignment of error is overruled.

### **C. Third Assigned Error for Review — Expert Testimony**

{¶ 49} In their third assigned error for review, Appellants argue that the trial court erred when it failed to grant their motion to exclude the expert report and testimony of Appellees' expert witness. There is no indication that the trial court relied on the challenged expert report. And even if the trial court had relied on the expert's report, we find that the outcome would have been the same. Having already conducted our own independent review of the record, we have determined that summary judgment was appropriate without reliance on the expert report. As such, Appellants have failed to demonstrate they were prejudiced by the trial court's failure to exclude the expert's report and testimony. *Brown*, 2015-Ohio-5146, at ¶ 66 (8th Dist.) (recognizing that since an appellate court reviews the trial court's ruling granting summary judgment de novo, any error in the trial court's reasoning is harmless).

{¶ 50} One of the many exhibits Appellees provided the trial court in support of its motion for summary judgment was an expert report authored by Colker in

which she offered her opinion concerning the instant litigation. Appellants moved to exclude the expert report and testimony. The trial court did not rule on Appellants' motion prior to granting Appellees' motion for summary judgment. It is well-settled that “when a court fails to rule on a motion it will be presumed that the court . . . denied said motion.” *Cleveland v. Barnes*, 2023-Ohio-1888, ¶ 23 (8th Dist.), quoting *Univ. Mednet v. Blue Cross & Shield*, 126 Ohio App.3d 219, 236 (8th Dist. 1997). As such, we presume Appellants' motion to exclude the expert report and testimony was denied.

**{¶ 51}** In granting Appellees' motion for summary judgment, the court did so without explaining its decision, nor was it required to do so. *Brown* at ¶ 66 (noting that “a trial court is not required to provide specific findings of fact and conclusions of law — or an ‘explanation’ — in ruling on summary judgment motions”), citing *Kristian v. Youngstown Orthopedic Assocs.*, 2004-Ohio-7064, ¶ 21 (7th Dist.). As a result, there is no indication that the trial court relied on the challenged expert report. Nonetheless, even if the court had relied on the expert report, and even if said reliance was improper, any error would be harmless. *See id.*

**{¶ 52}** Having conducted our own de novo review of the trial court's judgment without relying on the expert report, we found that the Appellees were entitled to summary judgment as a matter of law. We therefore find that the trial court's failure to grant Appellants' motion to exclude the expert report and testimony did not prejudice Appellants.

**{¶ 53}** For these reasons, Appellants' third and final assignment of error is overruled.

### **III. Conclusion**

**{¶ 54}** Based on our review of the record and undisputed facts and reviewing all the evidence in a light most favorable to Appellants, we find that Appellants failed to demonstrate that they had engaged in protected activity, the threshold element to support their retaliation claim. Accordingly, Appellees were entitled to summary judgment as a matter of law and the trial court was not required to use the phrase "as a matter of law" when granting Appellees' motion. And finally, we find that the trial court did not err by not excluding the expert report submitted by Appellees since our de novo review of summary judgment revealed that summary judgment was appropriate as a matter of law, without reliance on the expert report.

**{¶ 55}** Judgment affirmed.

It is ordered that appellees recover of appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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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MICHELLE J. SHEEHAN, ADMINISTRATIVE JUDGE

LISA B. FORBES, J., and  
MICHAEL JOHN RYAN, J., CONCUR