

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JASON GOTT,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 115899
v.	:	
	:	
BAKER CONCRETE	:	
CONSTRUCTION, INC.,	:	
	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFRIMED IN PART, REVERSED IN PART, AND
REMANDED
RELEASED AND JOURNALIZED: September 10, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-24-108977

Appearances:

Zipkin Whiting Co., L.P.A., Lewis A. Zipkin, Kevin M.
Gross, and Ryan P. Dalton, *for appellant.*

Jackson Lewis P.C., Douglas B. Schnee, and Julia L.
Denmeade, *for appellee.*

ANITA LASTER MAYS, J.:

{¶ 1} Plaintiff-appellant Jason Gott (“Gott”) appeals the judgment of the Cuyahoga County Court of Common Pleas granting summary judgment in favor of

defendant-appellee Baker Concrete Construction, Inc. (“Baker”) on Gott’s claims for a race-based, hostile work environment in violation of R.C. 4112.02(A) and retaliation in violation of R.C. 4112.02(I). After a thorough review of the record and applicable law, we affirm in part, reverse in part, and remand.

I. Facts and Procedural History

{¶ 2} Gott began his career in the construction trades in 2013 when he entered the Construction Craft Laborer Apprenticeship Program with Building Laborers’ Union Local No. 310. Within two years, Gott completed approximately 4,000 hours of on-the-job training and approximately 436 hours of classroom instruction and he attained the status of journeyman. After becoming a journeyman in 2015, Gott worked on numerous large-scale construction projects in Cuyahoga County, including all three Amazon Fulfillment Centers, the 34-story Lumen Playhouse Square project, the Hilton Hotel in downtown Cleveland, the MetroHealth parking garages, and the Case Western Reserve University parking garages.

{¶ 3} On January 3, 2023, Gott began his employment with Baker as a laborer foreman. Gott was initially assigned to a dormitory construction project at Case Western Reserve University. In March 2023, Baker reassigned Gott to the Sherwin-Williams construction site in downtown Cleveland, where he served as the concrete pour foreman and supervised crews of six to eight laborers at a time. Gott testified that the Gott-led concrete crew poured over 30 floors of concrete on that project. Gott described the work as physically demanding, explaining that the job

required digging, setting forms, standing in concrete, and working alongside the crew to direct and assist with each pour.

{¶ 4} In his position as a laborer foreman, Gott reported on a day-to-day basis to laborer foreman Mike Wozny (“Wozny”). Gott was also supervised by laborer general foreman Matthew Doherty (“Doherty”) and, beginning in July 2023, by concrete superintendent and general foreman Donnie Metcalf (“Metcalf”). Gott’s written job description identified responsibilities that included overseeing jobsite logistics, coordinating the handling of equipment and materials, tracking and escorting deliveries, and performing sign-in and sign-out procedures, in addition to assisting with installation tasks alongside other site supervisors.

{¶ 5} Gott and Metcalf had a prior working relationship that predated their employment with Baker. The two men had worked together for several years at Cleveland Cement Contractors, where Gott served as a concrete foreman and Metcalf served as concrete superintendent and Gott’s direct supervisor. Gott testified that while he was employed at Cleveland Cement, Metcalf subjected him to racial harassment, including repeatedly calling him “Puerto Rican,” calling him a “spic,” and using the “N” word in reference to him, telling Gott that he “looked like one and worked like one too.” Gott testified that he complained about Metcalf’s conduct at Cleveland Cement to Joe Capone (“Capone”), who at that time served as Metcalf’s direct supervisor and as a human resources officer for Cleveland Cement. Metcalf categorically denied ever using a racial slur toward Gott at any point during their working relationship.

{¶ 6} Baker hired Metcalf in July 2023. Although Metcalf maintained a high-level supervisory role over Gott, he was not Gott's direct or daily supervisor. Capone was also employed at Baker as Metcalf's supervisor during the relevant period. Gott did not report any concerns about Metcalf's prior conduct to Baker at the time Metcalf was hired. Gott testified that after Metcalf joined Baker in August 2023, Metcalf disregarded the chain of command and directed members of Gott's crew on what to do, conduct Gott characterized as "undermining" his authority. Gott further testified that, beginning in August 2023 and continuing through December 21, 2023, Metcalf "called [him] names" while they worked together at Baker.

{¶ 7} The specific incidents that gave rise to Gott's harassment complaint occurred on December 20 and December 21, 2023. Gott testified at his deposition that Metcalf used the racial slur "spic" toward him four to five times during this two-day period. On December 20, 2023, during a concrete pour at Case Western Reserve University, Gott was discussing a Facebook message his father had sent him concerning Gott's ancestry, which Gott identifies as Puerto Rican, Mexican, and German. According to Gott, Metcalf responded by saying, "Oh, so you're a German spic," and then laughed. Gott testified that when Metcalf's son came over, Metcalf repeated the remark to his son and treated it as a joke. Gott testified that the slur "put me down. It lowered my self-esteem It was humiliating."

{¶ 8} The following day, December 21, 2023, Gott was discussing his ancestral background with Wozny when, according to Gott, Metcalf interjected,

“What did I call you yesterday? Oh wait, I remember, ‘a German spic.’” Gott further testified that, later the same day, a crew member named Dalton was not wearing his protective vest. Gott testified that he directed Dalton to put on a vest and that, in front of the concrete crew, Metcalf told Dalton, “Don’t worry about that spic,” while Gott was on his walkie-talkie advising Doherty that Dalton was not putting on the vest. Gott testified that Dalton ultimately did not put on the protective vest.

{¶ 9} A Baker employee, Dhani Conrad (“Conrad”), prepared a handwritten statement that Gott offered as corroboration of the vest incident. Conrad’s handwritten statement provides, in pertinent part, that “[Gott] asked [Metcalf] to tell Dalton to get his vest on and [Metcalf] just shrugged his shoulders as the pour continued[.] Dalton walked up to [Metcalf] and they briefly talked about it. At that point I heard [Metcalf] say, ‘Don’t worry about that spic.’ I turned and looked briefly but did not say anything.” Gott testified that he observed Conrad write the statement. The statement is unsigned, and Conrad was not deposed in this matter.

{¶ 10} On the afternoon of December 21, 2023, Gott verbally complained about Metcalf’s conduct to Doherty and to Baker’s field safety representative II, Jovan Edmond (“Edmond”). On December 22, 2023, Gott filed a written harassment complaint with Baker’s human resources department. Baker human resources representative Tonya Beesley (“Beesley”) documented that complaint, which stated that Metcalf had called Gott a “spic” on several occasions; that Gott identified his ancestry as Puerto Rican, Mexican, and German; and that Metcalf had allegedly engaged in similar conduct during the preceding three weeks. Gott also

informed Beesley that Metcalf had called him names at the prior project and that, after Gott had involved a business agent at that project, he was laid off the following day by Capone.

{¶ 11} Baker initiated an investigation into Gott's complaint. The day after Gott's complaint, Baker separated Gott and Metcalf to prevent further interaction. Gott confirmed in his deposition that he had no further contact with Metcalf after he submitted his complaint and that the two men did not work together again. On December 22, 2023, Beesley interviewed Gott, who identified Wozny as a potential witness. Union steward Todd Fonseca ("Fonseca") interviewed Wozny, who reported that he had not witnessed Metcalf use any racial slurs or make inappropriate remarks toward Gott. On December 23, 2023, Beesley interviewed Metcalf, who denied using any slurs or making inappropriate comments toward Gott and noted his prior strained history with Gott. Baker concluded that, based on the information then gathered, Gott's complaint could not be substantiated, although Baker maintained that the investigation remained ongoing. Baker did not interview Conrad, the author of the handwritten witness statement. Metcalf was not disciplined or subjected to corrective action.

{¶ 12} On Tuesday, December 26, 2023, Gott returned to the Sherwin-Williams jobsite. Gott testified that, instead of resuming his usual concrete pour foreman duties, Doherty informed him that Metcalf "wanted [Gott] to sit home, but [Doherty] decided to put [Gott] on gate duty." Gate duty at the Sherwin-Williams jobsite involved controlling access to the project, opening and closing the gate for

incoming trucks, and preventing pedestrian access. Because of the jobsite's location adjacent to Public Square in downtown Cleveland, Sherwin-Williams required Baker to station a worker at the entrance to perform these functions.

{¶ 13} Doherty assigned Gott to assist with gate duty on December 26, 27, 28, and 29, 2023, and again on January 3, 2024. Gott testified that he had never been assigned to gate duty before. Gott also testified that, although gate duty was “just one thing out of the whole day,” he understood the reassignment as a demotion that signaled to others on the jobsite that he was no longer the foreman of the concrete crew. Gott testified that the reassignment “embarrassed me, made me humiliated” and that “everybody on the job that walked by me knew . . . I just got reassigned because I was the boss.”

{¶ 14} Metcalf and Doherty both testified that all Baker employees at the Sherwin-Williams project, including members of the concrete crew and Metcalf himself, were routinely assigned to gate duty on a rotating basis, particularly on days when no concrete pour was occurring. Doherty testified that he regularly rotated employees through gate duty to ensure consistent coverage, explaining that “construction changes by the minute” and staffing had to remain flexible. Doherty testified that gate duty fell within the job description of a laborer foreman, which itself indicated that the listed duties were not exhaustive. Gott confirmed in his deposition that no one at Baker ever told him that his position was being permanently changed to gate duty. Gott further testified that he did not know who had assigned him to gate duty and that he had not spoken with Metcalf about it.

{¶ 15} By late December 2023 and early January 2024, the concrete work at the Sherwin-Williams project was substantially complete and Baker had begun laying off employees. Gott acknowledged in his deposition that most of the concrete had been poured by that time and that layoffs were occurring. On Friday, January 5, 2024, Doherty assigned Gott to pour concrete and Gott performed that work as he had previously. January 5, 2024, was the last day Gott reported to work at Baker. Gott did not return to work the following Monday, January 8, 2024, and instead began employment with a new employer that same day, with no gap in employment. Gott testified that no one at Baker told him not to return to work. Throughout his employment with Baker, Gott was never demoted, never received a reduction in pay or benefits, and was never disciplined.

{¶ 16} On December 17, 2024, Gott filed a complaint in the Cuyahoga County Court of Common Pleas asserting two causes of action against Baker: (1) hostile work environment based on race in violation of R.C. 4112.02(A); and (2) retaliation in violation of R.C. 4112.02(I). Gott's complaint did not allege constructive discharge.

{¶ 17} On July 28, 2025, after the close of discovery, Baker filed a motion for summary judgment seeking dismissal of both claims. Gott filed a brief in opposition on September 8, 2025. Baker filed a reply brief in support on September 15, 2025.

{¶ 18} On November 7, 2025, the trial court issued a four-page journal entry granting Baker's motion for summary judgment in full and dismissing all of Gott's claims with prejudice. With respect to the hostile work environment claim, the trial

court accepted Gott's allegations as true for purposes of summary judgment and concluded that the alleged use of a racial epithet four to five times over a two-day period was not sufficiently severe or pervasive as a matter of law to alter the terms, conditions, or privileges of Gott's employment. The trial court relied on *Montgomery v. ExchangeBase, L.L.C.*, 2024-Ohio-2585 (8th Dist.); *Chapa v. Genpak, L.L.C.*, 2014-Ohio-897 (10th Dist.); and *Amini v. Rite Aid Corp.*, 819 Fed.Appx. 344 (6th Cir. 2020).

{¶ 19} With respect to Gott's retaliation claim, the trial court concluded that the first two elements of a prima facie case, protected activity and the employer's knowledge of that activity, were not in dispute. The trial court determined, however, that Gott's temporary assignment to gate duty for five working days did not constitute an adverse employment action as a matter of law. The trial court emphasized that Gott was not terminated, was not demoted, did not suffer a loss in wages or benefits, and retained his title of laborer foreman and that gate duty fell within his written job description. The trial court further observed that Gott resumed concrete pouring on January 5, 2024, and that Gott himself identified humiliation and embarrassment as the only effects of the reassignment. Relying on *Ingram v. Glavin*, 2023-Ohio-1290 (8th Dist.), the trial court held that "a bruised ego," without a change in pay, benefits, or duties, cannot constitute an adverse employment action for retaliation purposes. The trial court accordingly entered judgment in Baker's favor on both claims and assessed costs against Gott.

{¶ 20} Gott timely filed a notice of appeal from the trial court’s November 7, 2025 judgment. Gott raises two assignments of error for our review:

1. The trial court erred in granting Baker summary judgment on Gott’s hostile work environment claim because the record establishes that the workplace harassment was severe and pervasive; and
2. The trial court erred in granting Baker summary judgment on Gott’s retaliation claim because the record establishes that Gott suffered an adverse employment action causally connected to his protected activity.

II. Summary Judgment

{¶ 21} In Gott’s first assignment of error, he argues that the trial court erred in granting summary judgment on his hostile work environment claim because the record demonstrates that the racial harassment he endured was sufficiently severe or pervasive to alter the terms and conditions of his employment.

A. Summary Judgment

{¶ 22} An appellate court reviews a trial court’s grant of summary judgment de novo. *Montgomery*, 2024-Ohio-2585, at ¶ 47 (8th Dist.); *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). Under this standard, the reviewing court conducts an independent review of the record and affords no deference to the trial court’s determination. *Blagg v. S.T.O.F.F.E. Fed. Credit Union*, 2024-Ohio-2579, ¶ 47 (8th Dist.).

{¶ 23} Summary judgment is appropriate when there is no genuine issue as to any material fact, the moving party is entitled to judgment as a matter of law, and, construing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the

nonmoving party. Civ.R. 56(C); *Montgomery* at ¶ 48. The party moving for summary judgment bears the initial burden of demonstrating that no genuine issue of material fact exists. Once the moving party satisfies that burden, the nonmoving party may not rest upon the mere allegations of the pleadings but must set forth specific facts demonstrating a genuine issue for trial. *Id.*

B. Law and Analysis

{¶ 24} R.C. 4112.02(A) makes it an unlawful discriminatory practice for an employer, because of an employee's race, to discriminate against that person with respect to the terms, conditions, or privileges of employment. To establish a prima facie case of racially hostile work environment, a plaintiff must demonstrate that (1) the harassment was unwelcome; (2) the harassment was based on race; (3) 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) either the harassment was committed by a supervisor, or 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. *Hampel v. Food Ingredients Specialties, Inc.*, 89 Ohio St.3d 169 (2000), paragraph two of the syllabus.

{¶ 25} Our review of the record reveals that Baker hired Metcalf as a high-ranking supervisor over Gott in July 2023. Although Metcalf was not Gott's direct supervisor, he was in a supervisory role as a concrete superintendent and that Gott was subjected to his authority and directives. Gott identified his ancestry as Puerto

Rican, Mexican, and German. Gott revealed that Metcalf called him a “spic” on more than one occasion and, after learning of his ancestry, called him a “German spic.” Metcalf also undermined Gott’s authority when Gott directed a subordinate to put on a safety vest and Metcalf stated, “don’t worry about that spic.” Per Gott, these interactions caused him to feel dejected and humiliated. We determine that Gott did not welcome the harassment from his supervisor, which was based on his race, and that three of four elements to establish a prima facie case of racially hostile work environment were met. With respect to the hostile work environment claim, the trial court accepted Gott’s allegations as true for purposes of summary judgment and concluded that the alleged use of a racial epithet four to five times over a two-day period was not sufficiently severe or pervasive as a matter of law to alter the terms, conditions, or privileges of Gott’s employment.

{¶ 26} Because our review is de novo, we owe no deference to the trial court’s legal conclusion and we may affirm summary judgment on any ground the record supports. *See Chapa v. Genpak, L.L.C.*, 2014-Ohio-897, at ¶ 27 (10th Dist.). From our review, *supra*, three of the four elements of R.C. 4112.02(A)(2) have been met. Baker moved for summary judgment on the hostile work environment claim on the third element alone, whether the harassing conduct was severe or pervasive. We also address that element de novo.

{¶ 27} In assessing whether conduct is sufficiently severe or pervasive, a court must consider the totality of the circumstances. *Hampel*, 89 Ohio St.3d at 180. The relevant circumstances include the frequency of the 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. *Id.* The conduct must be both objectively and subjectively offensive, such that a reasonable person would find the environment hostile or abusive and the victim in fact perceived it to be so. *Id.* See also *Farris v. Port Clinton City School Dist.*, 2006-Ohio-1864, ¶ 49 (6th Dist.).

{¶ 28} To succeed on a cause of action for a hostile work environment created by racial harassment, Goff must demonstrate that he is a member of a protected class; the harassment was unwelcome; the harassment was based on race; the harassment had the effect or purpose of unreasonably interfering with the employee's work performance or of creating an intimidating, hostile, or offensive work environment; and his employer is liable through respondeat superior. *Croley v. JDM Servs., L.L.C.*, 2025-Ohio-4762, ¶ 20 (10th Dist.), citing *Hinton v. Ohio Dept. of Youth Servs.*, 2022-Ohio-4783, ¶ 33 (10th Dist.).

{¶ 29} The record viewed in the light most favorable to Gott reflected the following. Gott, who identified his ancestry as Puerto Rican, Mexican, and German, worked as a concrete pour foreman supervising a crew of six to eight laborers at Baker's Sherwin-Williams jobsite. Metcalf, the concrete superintendent and general foreman, occupied a supervisory role over Gott.

{¶ 30} Gott testified that on December 20, 2023, while Gott was discussing his ancestry on the jobsite, Metcalf said to him, "Oh, so you're a German spic," and then laughed about it. When Metcalf's son arrived at the site, Metcalf repeated the

slur to his son as a joke. The following day, December 21, 2023, in the presence of fellow supervisor Wozny, Metcalf again invoked the slur, exclaiming, “What did I call you yesterday? Oh wait, I remember, ‘a German spic.’” Later that same day, when Gott directed laborer Dalton to put on his safety vest, Metcalf intervened in front of the assembled concrete crew and told Dalton, “Don’t worry about that spic.” Conrad provided a contemporaneous handwritten statement corroborating that exchange.

{¶ 31} Gott testified that Metcalf’s conduct caused him humiliation and embarrassment in front of the crew he supervised and that the slurs lowered his self-esteem and undermined his authority on the jobsite. He explained that being called a “spic” as a person of Puerto Rican descent was, in his view, the equivalent of calling a Black person the “N” word. Gott also testified that Metcalf had directed similar slurs at him at a prior employer where the two had worked together, although that earlier conduct is not actionable against Baker.

{¶ 32} In assessing whether conduct is sufficiently severe or pervasive, a court must consider the totality of the circumstances. *Hampel*, 89 Ohio St.3d at 180. The relevant circumstances “include the frequency of the 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.” *Id.*, quoting *Harris v. Forklift Sys.*, 510 U.S. 17, 23 (1993). The conduct must be both objectively and subjectively offensive, such that a reasonable

person would find the environment hostile or abusive and the victim in fact perceived it to be so. *Id.*

{¶ 33} We disagree that summary judgment was warranted on this record. The severe or pervasive inquiry is not a tallying exercise; the two prongs are disjunctive, and a deficiency in frequency can be compensated by the severity of the conduct. *Montgomery*, 2024-Ohio-2585, at ¶ 61 (8th Dist.). Courts considering racial slurs at the most virulent end of the spectrum, such as the “N” word, have recognized that such terms carry a unique and severe stigmatic force that mere offensive utterances do not. Gott’s testimony, viewed in the light most favorable to him, was not limited to four to five isolated comments. He testified that Metcalf “called [Gott] names from August [of 2023] up until” December 21, 2023, and that Metcalf’s harassment of him became “increasingly brash, aggressive, and malicious” over time. His December 22, 2023 written complaint to Baker’s human resources department, likewise reported that the slur had been used over a three-week period.

{¶ 34} The trial court’s framing of the record as confined to a two-day episode therefore did not credit Gott’s testimony in the light most favorable to him. Under the totality-of-the-circumstances test, a factfinder evaluating this record would have to consider that the slurs were uttered by Gott’s supervisor; that they were uttered in the presence of the laborers Gott was responsible for supervising and in the presence of another Baker supervisor; that one use of the slur was directly tied to a workplace safety directive Gott gave, with the result that Gott’s authority was openly undermined when the laborer was permitted to disregard the safety

instruction; and that Gott testified the conduct humiliated him and impaired his ability to lead his crew. These are precisely the considerations that the severity inquiry directs a factfinder to weigh. *Id.* at ¶ 62-63.

{¶ 35} The fact that the harasser was Gott’s supervisor and that the slurs were deployed in front of subordinates whose respect Gott needed in order to do his job is significant. A racial slur uttered by a supervisor in the presence of the harassed employee’s subordinates is qualitatively different from the same word exchanged between coworkers out of earshot of others because it operates not only as an insult but as a public diminishment of the employee’s authority and standing in the workplace. *See Croley*, 2025-Ohio-4762, at ¶ 28 (10th Dist.) (collecting cases holding that a supervisor’s use of a racial slur, even on one or two occasions, may be severe enough to support a hostile work environment claim); *see also Torres v. Pisano*, 116 F.3d 625, 632-633 (2d Cir. 1997). Here, the slurs were uttered not only by a supervisor but in the presence of the laborers Gott was responsible for supervising. Gott’s testimony that Metcalf’s conduct made it “look like [Gott had] no authority,” and that the crew he had trained from the ground up witnessed the slurs, raised a triable question whether the harassment unreasonably interfered with his work performance. Tr. 49. Viewed most favorably to Gott, this evidence raised a triable question whether the harassment unreasonably interfered with his work performance. Tr. 100-101.

{¶ 36} The independent corroboration of the December 21, 2023 vest incident by coworker Conrad’s contemporaneous handwritten statement further

distinguishes this case from one in which the record is confined to the plaintiff's bare assertions. Although Baker disputed the admissibility of that statement, on summary judgment the record must be construed in favor of the nonmoving party and Gott authenticated his observation of Conrad writing the statement at the time of the incident.

{¶ 37} On this record, reasonable minds could differ as to whether Metcalf's conduct, evaluated in its full context and as part of a course of conduct that Gott testified extended over a period of months and culminated in the December 2023 incidents, was sufficiently severe or pervasive to alter the conditions of Gott's employment. The question whether harassment is severe or pervasive is generally a question of fact for the jury, and summary disposition is appropriate only where the evidence, even when viewed most favorably to the plaintiff, could not support a finding in his favor. *See Hawkins v. Anheuser-Busch, Inc.*, 517 F.3d 321, 333 (6th Cir. 2008) (whether harassing conduct is sufficiently severe or pervasive is "quintessentially a question of fact"), quoting *Jordan v. Cleveland*, 464 F.3d 584, 597 (6th Cir. 2006). On this record, that threshold against the plaintiff was not met.

{¶ 38} Indeed, a single incident may create a hostile work environment where the conduct is sufficiently severe. *Croley*, 2025-Ohio-4762, at ¶ 27 (10th Dist.). To say that a single incident rarely creates a hostile work environment is not to say that it never can. *Id.* at ¶ 28. As the Tenth District recognized in *Croley*, several federal courts of appeals have held that a supervisor's use of a racial slur, even on one or two occasions, can be severe enough to support a hostile work

environment claim. *Id.*, citing *Woods v. Cantrall*, 29 F.4th 284, 285 (5th Cir. 2022); *Castleberry v. STI Group*, 863 F.3d 259, 264-265 (3d Cir. 2017); and *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 280 (4th Cir. 2015) (a reasonable jury could find that a supervisor's two uses of a racial epithet, whether viewed as a single incident or as a pair of discrete instances, were severe enough to engender a hostile work environment). Because Ohio courts treat federal case law interpreting Title VII as generally applicable to claims under R.C. Ch. 4112, this authority is instructive here. See *Little Forest Med. Ctr. v. Ohio Civ. Rights Comm.*, 61 Ohio St.3d 607, 609-610 (1991).

{¶ 39} Accordingly, we determine that the trial court erred in granting summary judgment to Baker on Gott's hostile work environment claim under R.C. 4112.02(A).

{¶ 40} Therefore, appellant's first assignment of error is sustained.

{¶ 41} In his second assignment of error, Gott contends that the trial court erred in granting summary judgment to Baker on his retaliation claim under R.C. 4112.02(I). Gott argues that he engaged in protected activity when he complained to Baker's human resources department about Metcalf's race-based harassment and that Baker retaliated against him by reassigning him to gate duty just days later.

{¶ 42} R.C. 4112.02(I) prohibits any person from discriminating in any manner against any other person because that person has opposed any unlawful

discriminatory practice or because that person has made a charge, testified, assisted, or participated in any investigation, proceeding, or hearing under R.C. Ch. 4112.

{¶ 43} To establish a prima facie case of retaliation, a plaintiff must demonstrate that (1) the plaintiff engaged in a protected activity, (2) the employer knew of the plaintiff's participation in the protected activity, (3) the employer took an adverse employment action against the plaintiff, and (4) a causal connection existed between the protected activity and the adverse employment action. *Ingram*, 2023-Ohio-1290, at ¶ 47 (8th Dist.).

{¶ 44} Baker did not dispute, for purposes of summary judgment, that Gott engaged in protected activity when he reported Metcalf's alleged use of a racial slur to Baker's human resources department on December 22, 2023, or that Baker knew of that complaint. The dispositive question on appeal is whether Gott produced evidence from which a reasonable jury could find that he suffered an adverse employment action.

{¶ 45} The record demonstrated that after Gott submitted his harassment complaint, he returned to the Sherwin-Williams jobsite on December 26, 2023, and was assigned to gate duty. Gott testified that gate duty involved directing concrete trucks from the street and that he had not previously been assigned to perform that task at this jobsite. He further testified that the assignment embarrassed and humiliated him because the laborers he had previously supervised observed that he was no longer running the concrete crew.

{¶ 46} The record established, however, that gate duty fell squarely within the written job description for Gott's position as a Laborer Foreman. Gott's general foreman, Doherty, testified that gate duty was a routine assignment performed by nearly every employee at the Sherwin-Williams jobsite, including members of the concrete pour team and Metcalf himself, particularly on days when no concrete pour was scheduled. Doherty further testified that he rotated employees through gate duty to ensure consistent coverage and that staffing at the jobsite necessarily remained flexible because "construction changes by the minute."

{¶ 47} Critically, Gott himself confirmed that the gate-duty assignment was neither permanent nor exclusive. When asked whether anyone at Baker had told him that his job was being permanently changed to gate duty, Gott answered: "That's just one thing out of the whole day. So, no." The record further showed that Gott was assigned to gate duty on only a handful of days at the end of December 2023 and on January 3, 2024, and that on his final day of work, January 5, 2024, he was again assigned to pour concrete and did so as usual. The undisputed record reflected that Gott's wages, benefits, title, and position as Laborer Foreman remained unchanged throughout this period.

{¶ 48} The record also reflected the operational context of the assignment. By late December 2023, the concrete work at the Sherwin-Williams project was substantially complete, layoffs had already begun, and Gott himself acknowledged that he understood most of the concrete had been poured and that layoffs were

occurring. Doherty testified that he assigned Gott to gate duty in part to keep him working at the site as concrete work wound down.

{¶ 49} Measured against the standard set out in *Blagg*, 2024-Ohio-2579 (8th Dist.), and *Ingram*, we find the evidence in the record was insufficient to permit a reasonable jury to find that Gott suffered a materially adverse employment action. Gott retained his title, his rate of pay, his benefits, and his position as Laborer Foreman. The complaint-of assignment was a task expressly contemplated by his written job description, was routinely rotated among other employees, including supervisors, and occupied only a portion of his workday on a limited number of days before he was returned to concrete work on January 5, 2024. *See Ingram*, 2023-Ohio-1290, at ¶ 50 (8th Dist.) (reassignment involving only minor changes in working conditions does not amount to an adverse employment action).

{¶ 50} Gott's testimony that the assignment embarrassed and humiliated him in front of laborers he had previously supervised, although understandable from his perspective, does not by itself transform a temporary, in-description task rotation into a materially adverse employment action under R.C. 4112.02(I). Subjective feelings of embarrassment or loss of prestige, unaccompanied by any change in pay, benefits, title, or material job responsibilities, are insufficient under *Ingram* to satisfy the third element of a prima facie retaliation claim. *Id.*

{¶ 51} An adverse employment action in the retaliation context is one that a reasonable employee would have found materially adverse, meaning that it well might have dissuaded a reasonable worker from making or supporting a charge of

discrimination. *Blagg* at ¶ 75. A reassignment of duties involving only minor changes in working conditions does not amount to an adverse employment action. *Ingram* at ¶ 50. Petty slights, minor annoyances, and a simple lack of good manners do not rise to the level of materially adverse conduct.

{¶ 52} Because Gott failed to produce evidence from which a reasonable jury could find that he suffered an adverse employment action, we find he could not establish a prima facie case of retaliation under R.C. 4112.02(I) and the trial court did not err in granting summary judgment in favor of Baker on that claim.

{¶ 53} Therefore, appellant's second assignment of error is overruled.

{¶ 54} Judgment affirmed in part, reversed in part, and remanded.

It is ordered that the parties split the 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 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.

ANITA LASTER MAYS, JUDGE

EILEEN T. GALLAGHER, P.J., and
SEAN C. GALLAGHER, J., CONCUR