

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

SARAH LARKIN

C.A. No. 31756

Appellant

v.

WALMART, INC.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV-2024-01-0277

Appellee

DECISION AND JOURNAL ENTRY

Dated: October 21, 2026

FLAGG LANZINGER, Presiding Judge.

{¶1} Plaintiff-Appellant Sarah Larkin appeals, pro se, the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} Larkin worked for Defendant-Appellee Walmart, Inc. on two separate occasions, once in 2015 for a few months, and again in September 2022, until June 2023, when she was terminated. Larkin was a customer host. In that role, inter alia, she was expected to check receipts and to serve as a deterrent to criminal activity via her presence at entrances.

{¶3} Walmart, Inc. had a progressive disciplinary policy which was color coded from yellow to orange to red. When an employee was subject to disciplinary action, it remained active for 12 months. However, at any time, depending on the severity of the issue, the employee's manager could also terminate the employee.

{¶4} Larkin’s employment records disclosed a history of written warnings including yellow, orange, and red warnings issued prior to her termination. At the time of her termination, Larkin was under an active red-level warning. Walmart, Inc.’s records reflect that Larkin was terminated due to ongoing performance and attendance issues.

{¶5} In January 2024, acting pro se, Larkin filed a complaint. She amended the complaint in February 2024. The trial court would ultimately interpret her amended complaint as alleging only a claim of racial discrimination.

{¶6} In September 2025, Walmart, Inc. filed a motion for summary judgment. Walmart, Inc. argued that Larkin’s racial discrimination claim failed as a matter of law. Specifically, it asserted that Larkin could not establish a prima facie case of racial discrimination because she was not qualified for her position and she was not treated differently than similarly situated Caucasian employees nor was she replaced by someone outside her protected class. Walmart, Inc. further maintained that Larkin was unable to demonstrate that Walmart, Inc.’s actions were a pretext for discrimination. In support of its claims, Walmart, Inc. pointed to various documents accompanying its motion, including Larkin’s disciplinary history, an affidavit by the store manager, time records, and Larkin’s deposition.

{¶7} Larkin responded in opposition. She asserted that each of the disciplinary actions taken against her occurred after she had reported a claim of wage theft to Walmart, Inc. in December 2022. Thus, she argued that the disciplinary actions were done in retaliation. In addition, Larkin moved the trial court to strike the store manager’s affidavit because the store manager had “no firsthand knowledge of [Larkin’s] work performance” and the store manager’s statements were “based on [] records she reviewed without [Larkin’s] permission.” In support of

Larkin's claim that her hours were altered, she pointed to one of Walmart, Inc.'s exhibits. Otherwise, Larkin did not specifically point to or submit any evidence in support of her arguments.

{¶8} Walmart, Inc. filed a reply in support of its motion. Inter alia, it asserted that the store manager's affidavit was supported by personal knowledge and authenticated business records and that it was inappropriate for Larkin to raise a claim of retaliation for the first time in her summary judgment briefing.

{¶9} In November 2025, the trial court issued an entry granting summary judgment to Walmart, Inc. In so doing, the trial court also denied Larkin's motion to strike the affidavit of the store manager. The trial court concluded that Walmart, Inc. met its initial burden and Larkin failed to meet her reciprocal burden.

{¶10} Larkin has appealed, raising two assignments of error for our review, which will be addressed out of sequence to facilitate our review.

I.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED BY RELYING UPON THE AFFIDAVIT OF [THE STORE MANAGER] WHERE THE AFFIDAVIT WAS NOT BASED UPON PERSONAL KNOWLEDGE AS REQUIRED BY CIV.R. 56(E).

{¶11} Larkin asserts in her second assignment of error that the trial court erred in relying upon the affidavit of the store manager when it was not based upon personal knowledge. Specifically, Larkin argues that the store manager did not supervise Larkin and had no direct involvement in the events detailed in the affidavit.

{¶12} "This Court applies an abuse of discretion standard in reviewing a trial court's determination regarding a motion to strike." *Wicks v. Lover's Lane Market*, 2022-Ohio-2652, ¶ 7 (9th Dist.). An abuse of discretion implies that the trial court's decision was unreasonable,

arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Civ.R. 56(E) provides, in relevant part, that, “[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.” “[P]ersonal knowledge can be inferred from the nature of the facts in the affidavit and the identity of the affiant.” *Salemi v. Cleveland Metroparks*, 2016-Ohio-1192, ¶ 18, quoting *State ex rel. Lanham v. DeWine*, 2013-Ohio-199, ¶ 15. “Generally, a mere assertion of personal knowledge satisfies the personal knowledge requirement of Civ.R. 56(E) if the nature of the facts in the affidavit combined with the identity of the affiant creates a reasonable inference that the affiant has personal knowledge of the facts in the affidavit.” *Wells Fargo Bank, NA v. Russell*, 2019-Ohio-776, ¶ 24 (9th Dist.), quoting *Bank One, N.A. v. Lytle*, 2004-Ohio-6547, ¶ 13 (9th Dist.). “It is only when ‘particular averments’ in an affidavit undermine the likelihood that the affiant has personal knowledge of the facts that more than a conclusory statement of personal knowledge is required.” *Russell* at ¶ 24, quoting *Deutsche Bank Natl. Trust Co. v. James*, 2016-Ohio-7950, ¶ 10 (9th Dist.).

{¶13} Here, the store manager specifically averred that her affidavit was based upon personal knowledge. She stated that, since September 2022, she was the store manager of the store where Larkin worked. The store manager stated that she “oversee[s] operations and personnel for the entire store. [She is] also familiar with and able to access Walmart’s policies, personnel and store records, and operational systems.” While the store manager did not directly supervise Larkin, she “personally observed and [was] aware of her performance during her employment.” The store manager “regularly observed [] Larkin on her phone while working, which caused her to ignore

customers entering and leaving the store. It was also common for [] Larkin to leave her workstation in the store vestibules without notifying her supervisors.”

{¶14} In the trial court, Larkin sought to exclude the store manager’s affidavit because the store manager had “no firsthand knowledge of [Larkin’s] work performance” and the store manager’s “statements [were solely] based on [] records she reviewed without [Larkin’s] permission.” Larkin did not support her argument with any evidence, and her arguments are directly contradicted by the store manager’s affidavit; therein, the store manager averred that she observed Larkin’s work performance and thus her statements would not be solely based on employment records.

{¶15} On appeal, Larkin has not developed an argument explaining how the trial court abused its discretion in considering the store manager’s affidavit. While Larkin is correct that the store manager was not her supervisor, Larkin has not explained why this would be determinative of the store manager’s personal knowledge when the store manager attested to observing Larkin’s work performance and some of the issues reported in Larkin’s disciplinary records. Further, given the store manager’s statements about her observations of Larkin’s work performance, Larkin’s conclusory statement that the store manager was uninvolved in the events discussed in the affidavit is unavailing. Larkin has failed to demonstrate on appeal that the trial court abused its discretion in failing to strike the affidavit of the store manager.

{¶16} Larkin’s second assignment of error is overruled.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT-APPELLEE WALMART[,] INC. WHERE GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING PLAINTIFF-APPELLANT SARAH LARKIN’S CLAIMS OF DISCRIMINATION, RETALIATION, AND WAGE THEFT.

{¶17} Larkin asserts in her first assignment that the trial court erred in granting summary judgment to Walmart, Inc. because there were genuine issues of material fact remaining.

Initially, this Court notes[] “that pro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities. However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that [s]he remains subject to the same rules and procedures to which represented litigants are bound. [Sh]e is not given greater rights than represented parties, and must bear the consequences of h[er] mistakes. This Court, therefore, must hold [Larkin] to the same standard as any represented party.”

Licitri v. DiBaggio, 2024-Ohio-1154, ¶ 8 (9th Dist.), quoting *First Communications, L.L.C. v. Helms*, 2016-Ohio-7586, ¶ 6 (9th Dist.).

{¶18} Summary judgment is appropriate if:

(1) [n]o genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977). To succeed on a motion for summary judgment, the party moving for summary judgment must first be able to point to evidentiary materials that demonstrate there is no genuine issue as to any material fact, and that it is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). If the movant satisfies this burden, the nonmoving party “must set forth specific facts showing that there is a genuine issue for trial.” *Id.* at 293, quoting Civ.R. 56(E). This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996).

{¶19} When relying upon indirect evidence to support a claim of unlawful discrimination based upon race, a plaintiff must establish the following to demonstrate a prima facie case of discrimination: “(1) membership in a protected class; (2) qualification for the position; (3) an adverse employment action; and (4) replacement by a non-protected person.” *Smith v. Stow*, 2023-

Ohio-4302, ¶ 13 (9th Dist.), quoting *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

[A] plaintiff can also make out a prima facie case by showing, in addition to the first three elements, that a comparable non-protected person was treated better. When attempting to show that a comparable non-protected person was treated better, a plaintiff must produce evidence which at a minimum establishes (1) that [s]he was a member of a protected class and (2) that for the same or similar conduct [s]he was treated differently than similarly-situated non-minority employees. The parties to be compared must be similarly-situated in all respects, meaning they must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it. Thus, discrimination can be shown either by replacement by a non-protected person or by favorable treatment to comparable persons similarly-situated.

(Internal quotations and citations omitted.) *Smith* at ¶ 13. “Once a plaintiff establishes a prima facie case, the burden then shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action.” *Id.* at ¶ 12, quoting *Rivers v. Cashland*, 2013-Ohio-1225, ¶ 16 (9th Dist.). “Once the employer states a nondiscriminatory reason for the action, the burden shifts back to the plaintiff to demonstrate by a preponderance of the evidence that the reason articulated by the defendant was mere pretext.” *Smith* at ¶ 12, quoting *Rivers* at ¶ 16.

{¶20} Here, Larkin has failed to meet her burden on appeal to demonstrate the trial court erred in granting summary judgment to Walmart, Inc. Under Appellate Rule 16(A)(7), the appellant's brief shall 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.” “As this Court has stated, ‘merely setting forth conclusory statements’ does not satisfy an appellant's burden on appeal.” *State v. Petric*, 2026-Ohio-2458, ¶ 11 (9th Dist.), quoting

Pietrangelo v. Lorain Cty. Pr. & Pub. Co., 2017-Ohio-8783, ¶ 23 (9th Dist.), quoting *In re B.P.*, 2015-Ohio-48, ¶ 10 (9th Dist.).

{¶21} Larkin’s entire argument concerning this assignment of error totals six sentences. It is conclusory and undeveloped. *See Petric* at ¶ 11. Larkin does not point to specific places in the record that demonstrate genuine issues of material fact, nor does she identify how the facts that she maintains are disputed and material relate to her claim of racial discrimination.

{¶22} The trial court concluded that it was undisputed that Larkin was a member of a protected class and was subject to an adverse employment decision. *See Smith*, 2023-Ohio-4302, at ¶ 13 (9th Dist.), quoting *McDonnell Douglas Corp.*, 411 U.S. at 802. It was disputed whether Larkin could demonstrate that she was qualified for her position and whether she was replaced by someone outside her protected class or whether a similarly situated non-protected person was treated better. *See id.* The trial court ultimately determined that Walmart, Inc. met its initial summary judgment burden and Larkin failed to meet her reciprocal burden.

{¶23} In support of its argument in the trial court, Walmart, Inc. relied upon several exhibits accompanying its motion. While some of those exhibits were improper summary judgment evidence, the only item challenged by Larkin was the affidavit of the store manager, which was addressed previously above. *See Civ.R. 56(C); Wallner v. Thorne*, 2010-Ohio-2146, ¶ 18 (9th Dist.). “As a general rule, a trial court abuses its discretion when it considers evidence that has been improperly submitted in support of, or in opposition to, a motion for summary judgment. The trial court retains discretion to either consider or ignore improper Civ.R. 56 evidence, however, when there has not been any objection to the evidence.” *Wallner* at ¶ 18.

{¶24} In support of its motion for summary judgment, Walmart, Inc. submitted the affidavit of the store manager who averred that the first customer host hired after Larkin’s

termination was another African American woman. *See Smith* at ¶ 13. In addition, Walmart, Inc. pointed out that Larkin failed to identify any specific individual who was a non-protected employee who was similarly situated and received better treatment. *See id.* Larkin did not rebut that assertion in response or offer any evidence to the contrary. Accordingly, there was un rebutted evidence before the trial court supporting the conclusion that Larkin could not establish a prima facie case of racial discrimination.

{¶25} Given all of the foregoing, and particularly in light of Larkin’s extremely limited argument on appeal, Larkin has failed to meet her burden to demonstrate that the trial court erred in granting summary judgment to Walmart, Inc. on her claim of racial discrimination.

{¶26} Larkin’s first assignment of error is overruled.

III.

{¶27} Larkin’s assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to

mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JILL FLAGG LANZINGER
FOR THE COURT

STEVENSON, J.
MANNING, J.
CONCUR.

APPEARANCES:

SARAH LARKIN, pro se, Appellant.

ALLISON L. GOICO and JONATHAN M. KELLEY, Attorneys at Law, for Appellee.