STATE OF MICHIGAN

COURT OF APPEALS

BRENDA DAVIS,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
March 18, 2021

No. 351617
Wayne Circuit Court
LC No. 18-006783-CD

Before: STEPHENS, P.J., and K. F. KELLY and RIORDAN, JJ.

PER CURIAM.

In this age discrimination and retaliation action, plaintiff appeals as of right the trial court opinion and order granting summary disposition in favor of defendant. Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In December 2015, plaintiff, who was then 59 years old, began working for defendant as an emergency services deployment operator (ESDO), commonly known as a 911 operator. Plaintiff completed a six-month probationary period, and in June 2016, her supervisors recommended that plaintiff receive "permanent status" as an ESDO. However, the change to permanent status was with the caveat that plaintiff's "expedition" of 911 calls "must improve," and that plaintiff was "coached" on several occasions regarding "the act of receiving, processing and routing" 911 calls.

In November 2016, administrative supervisor Crystal Watkins (Watkins) placed plaintiff back into the probationary ESDO class because Watkins believed that plaintiff needed remediation for "basic 9-1-1." In March 2017, plaintiff met with Watkins and asked to be taken out of training, and Watkins reluctantly agreed. However, plaintiff was apprised that after she left training she would be subject "to progressive corrective/disciplinary action."

In May 2017, defendant suspended plaintiff for three workdays because she failed to comply with defendant's procedures during two emergency calls. Additionally, in August 2017, plaintiff was suspended for ten workdays because she failed to follow defendant's procedures during a series of three emergency calls. Approximately two weeks later, plaintiff filed an Equal Employment Opportunity

Commission (EEOC) charge of employment discrimination against defendant, alleging that she was subjected to age discrimination and retaliation.

On October 8, 2017, Watkins filed a memorandum that recommended plaintiff be suspended for 30 days "with a recommendation for Discharge" pursuant to defendant's progressive disciplinary policy because of plaintiff's failure to follow defendant's procedures during a 911 call. On October 10, 2017, Althea Johnson, who was the "EEO/ADA Coordinator" for the Detroit Police Department, sent an e-mail to Brian Tennille, who was an "Employee Services Consultant" for the Detroit Police Department, asking for "information" regarding plaintiff's EEOC charge. On the morning of October 11, 2017, Tennille sent a message to Johnson and Watkins asking Watkins to call Johnson at her earliest convenience because Watkins was the best qualified to "go into depth" regarding plaintiff. On October 12, 2017, defendant suspended plaintiff for 30 days with a recommendation for discharge, and on October 16, 2017, defendant notified plaintiff that it intended to terminate her employment on November 13, 2017.

Plaintiff commenced this action, raising claims of age discrimination and retaliation against defendant. Plaintiff later amended her complaint to add federal age-discrimination and retaliation claims that corresponded to her state-law claims. Ultimately, the trial court granted defendant's motion for summary disposition and dismissed plaintiff's claims.[1]

II. MOTION FOR SANCTIONS

On appeal, plaintiff first argues that the trial court erred when it declined to rule on her motion for sanctions against defendant. Because plaintiff's characterization of the evidence does not comport with our review and ultimately summary disposition was proper under the circumstances, this claim of error does not entitle plaintiff to appellate relief.

This Court reviews a trial court's exercise of its inherent authority to sanction litigants for an abuse of discretion. See *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "An abuse of discretion occurs when the decision is outside the range of principled outcomes." *Hardrick v Auto Club Ins Ass'n*, 294 Mich App 651, 659-660; 819 NW2d 28 (2011). "However, failure to exercise discretion when called on to do so constitutes an abdication and hence an abuse of discretion." *Loutts v Loutts*, 298 Mich App 21, 24; 826 NW2d 152 (2012) (quotation marks and citations omitted). Generally, "trial courts possess the inherent authority to sanction litigants and their counsel, including the power to dismiss an action." *Maldonado*, 476 Mich at 376.

If a party fails to cooperate with discovery, the trial court may order sanctions against that party, which may include "an order striking pleadings or parts of pleadings" and "rendering a judgment by default against the disobedient party." MCR 2.313(B)(2)(c). "A court may impose the severe sanction of a default judgment only when a party flagrantly and wantonly refuses to facilitate discovery, not when the

[1] In plaintiff's statement of facts and procedural history, she alleged that Watkins "double-downed on her lie," "her 'memory' that day was a fickle creature," and plaintiff's counsel had to "trick her into admitting this perjurious, material misrepresentation" pertaining to an argument withdrawn by defense counsel after Watkins' testified at a continued deposition. These statements do not comport with MCR 7.212(C)(6) requiring a statement of facts fairly stated without argument or bias and containing all material facts, both favorable and unfavorable.

failure to comply with a discovery request is accidental or involuntary." *Hardrick*, 294 Mich App at 661 (quotation marks and citation omitted).

Further, under MCR 2.506, "[i]f a nonparty witness fails to obey a subpoena or order to attend, the remedy and sanctions are penalties *against the witness* for contempt of court." *McGee v Macambo Lounge, Inc*, 158 Mich App 282, 288; 404 NW2d 242 (1987). The court rules do not allow "for sanctions based on the substance of the deponent's testimony," but "a deponent may be charged with perjury for willfully false testimony on a material fact." *Swain v Morse*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 346850); slip op at 5.

In its motion for summary disposition, defendant argued that there was a strong inference that discrimination did not play a role in any adverse employment action against plaintiff because Watkins, having been "part of Plaintiff's interview panel and recommended and approved the hire of Plaintiff," both hired and fired plaintiff. Defendant also argued that there was no evidence that plaintiff's supervisors were aware of plaintiff's EEOC charge when plaintiff was terminated.

Plaintiff opposed defendant's motion for summary disposition and also filed a separate motion requesting that the trial court either strike the arguments discussed above from defendant's motion or enter a default in favor of plaintiff. Specifically, she alleged that defendant engaged in "misconduct" when Watkins "either lied or acted like she did not remember" being part of plaintiff's interview, when she also "lied about becoming aware" of plaintiff's EEOC charge, and when defendant provided "haphazard" and "jumbled" copies of e-mails that "made it very difficult" to ascertain if Watkins was involved in communications regarding plaintiff's EEOC charge. When additional discovery materials were provided, plaintiff alleged that they were produced in a manner designed to take hours to organize. Her response to the motion for summary disposition also referred to the motion to strike or enter default as sanctions.

Although plaintiff scheduled the hearing on her motion for sanctions for the same day as the hearing on defendant's dispositive motion, her sanctions motion was rescheduled by the trial court for a later date. During the October 18, 2019 hearing on the motion for summary disposition, defendant's withdrew its "same hire or fire argument" raised in the motion for summary disposition. Curiously, at this hearing, plaintiff never raised the issue of the outstanding motion for sanctions for untruths allegedly told in the Watkins' depositions.

On October 21, 2019, plaintiff filed an "emergency supplemental filing" to explain to the trial court that her attorney "did not notice" that the hearing date for her motion to strike was set for November 1, 2019, until the morning of the summary disposition hearing. Plaintiff admitted that her attorney elected to not "attempt to sort this issue out" during the hearing on the motion for summary disposition, but she nonetheless argued that it would be improper for the trial court to rule on the motion for summary disposition before hearing plaintiff's motion to strike. On October 22, 2019, the trial court entered an opinion and order granting defendant's motion for summary disposition, and the court did not provide a ruling on, or otherwise explicitly address, plaintiff's motion to strike.

In her motion for reconsideration of the order granting summary disposition, plaintiff argued that she was deprived of the right to be heard regarding her request for sanctions against defendant because the trial court never heard plaintiff's motion to strike, and that the trial court's actions "effectively ratified and condoned" defendant's misconduct. The trial court denied reconsideration while explaining only that "[n]o palpable error" had been brought to light.

Plaintiff contends that the trial court abdicated its responsibility to rule on her motion requesting sanctions when her motion could have affected the trial court's ruling on defendant's motion for summary disposition. However, even if we assume without deciding the trial court erred in failing to rule on the motion, the error was harmless because plaintiff failed to show any grounds for imposing sanctions against defendant. See MCR 2.613(A).

Defendant withdrew the "same hirer and firer" argument during the hearing on its motion for summary disposition, thus rendering moot plaintiff's request to strike that argument.[2] Accordingly, all that remained of plaintiff's request was for the trial court to enter a default against defendant in response to defendant's "willingness to utilize" the "fruits" of Watkins's misconduct by relying on either Watkins's lies or her feigned lack of memory regarding plaintiff's hiring interview. But plaintiff never demonstrated that Watkins actually lied or feigned a memory lapse.

During her deposition, Watkins testified that she made "recommendations on hiring," and that plaintiff "proved herself to reach the final phase of possible employment," which was an "interview" referred to as "the oral appraisal," and that Watkins was part of that interview panel. Plaintiff testified that her hiring interview was conducted by an "HR manager," a "sergeant," and a "woman" plaintiff did not remember the name of but who plaintiff believed "left shortly" after plaintiff was hired.

In Watkins's continued deposition, which occurred after defendant filed its motion for summary disposition, Watkins conceded that it was possible that she was not part of plaintiff's interview panel because she stopped participating in interviews during either 2015 or 2016. Watkins also testified that she did not recall when she first met plaintiff. Additionally, when plaintiff's counsel asked Watkins if she remembered the first time she spoke with plaintiff, Watkins responded that she did not "recall the very first time, but it would have been the date of her hire," and that she also gave "a speech" to the new hires before they were sent to the police academy for training.

At most, plaintiff showed that Watkins was unsure if she was part of plaintiff's hiring interview. Even if plaintiff had shown that Watkins offered perjured testimony, it is unclear why the conduct of a nonparty witness should be imputed to defendant, or why the trial court should order sanctions against defendant on the basis of the substance of deposition testimony that had not occurred when defendant moved for summary disposition. Plaintiff thus falls short of demonstrating occasion for any sanctions against defendant, much less one so severe as a default.

Plaintiff also requested that the trial court strike defendant's argument that Watkins had no notice of plaintiff's EEOC charge or enter a default against defendant on the grounds that Watkins lied about when she became aware of the charge, and that defendant provided plaintiff with "jumbled" copies of e-mails that made it difficult to ascertain Watkins's involvement in discussions about plaintiff's EEOC charge. Specifically, plaintiff contended that defendant's "disorganized" e-mail production was "lying by omission/other acts" because defendant engaged in "burying" the aforementioned e-mails and separating the different chains of correspondence. Yet it is unclear how plaintiff believed that she showed that

[2] A controversy is moot if no judicial decision can have any practical legal effect on the matter. See *Garrett v Washington*, 314 Mich App 436, 449; 886 NW2d 762 (2016).

defendant lied by omission where defendant actually produced the requested documents, even if plaintiff takes umbrage with how they were produced. The copies of the e-mails provided by plaintiff for the trial court to review are cognizable, and plaintiff offered no showing that the other documents defendant produced were nonresponsive. Therefore, plaintiff did not show that defendant engaged in any misconduct.

Plaintiff also asserted that Watkins lied about the timing of her discovery of plaintiff's EEOC charge. Even if Watkins initially testified that she was not sure when she became aware of plaintiff's EEOC charge, plaintiff neglected to acknowledge Watkins's testimony that she learned about plaintiff's EEOC charge from "Mr. Tennille from Human Resources in an e-mail." Thus, Watkins's testimony was consistent with her receipt of an October 11, 2017 e-mail from Tennille on that subject. Nonetheless, plaintiff contended that Watkins lied because during her continued deposition she testified that she did not speak to anyone regarding plaintiff's EEOC charge until she learned she was being deposed.

Plaintiff asserts that it was clear that Watkins was not being truthful during her deposition, but the e-mail from Tennille only asked Watkins to call Johnson to discuss plaintiff as an employee, and there is no evidence that Watkins actually learned the nature of plaintiff's EEOC charge at that time. The only other evidence plaintiff noted was that Watkins sent an e-mail to "Timekeeper" on October 11, 2017, asking for the names of any ESDOs who were suspended between March 2015 through November 2016 or within three months of plaintiff's suspension. But that e-mail does not indicate that Watkins was actually aware that plaintiff had raised a claim of age discrimination. Therefore, plaintiff failed to make any showing that Watkins actually lied during her depositions, and in any event, as discussed above, plaintiff failed to explain why defendant should have been sanctioned on the basis of the substance of Watkins's deposition.

III. AGE DISCRIMINATION

Plaintiff next contends that the trial court erred when it ruled that her age discrimination claims failed because plaintiff failed to provide evidence she was qualified for her position at the time of the adverse employment action. We disagree.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013). "A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of the plaintiff's claim and should be granted, as a matter of law, if no genuine issue of any material fact exists to warrant a trial." *Doe v Henry Ford Health Sys*, 308 Mich App 592, 596-597; 865 NW2d 915 (2014). "When evaluating a motion for summary disposition under MCR 2.116(C)(10), 'a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion.' " *Innovation Ventures v Liquid Mfg, LLC*, 499 Mich 491, 507; 885 NW2d 861 (2016), quoting *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). " 'Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law.' " *Innovation*, 499 Mich at 507, quoting *Maiden*, 461 Mich at 120.

Under the Civil Rights Act, MCL 37.2101 *et seq*. (the CRA), an employer shall not "[f]ail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of . . . age . . . ." MCL

37.2202(1)(a). Under the Age Discrimination in Employment Act of 1967, 29 USC 621 *et seq*. (the ADEA), it is unlawful for an employer "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age," 29 USC 623(a)(1), but these prohibitions against age discrimination only apply to individuals who are at least 40 years old, 29 USC 631(a).

A plaintiff may prove unlawful discrimination using direct or indirect evidence. *Hazle v Ford Motor Co*, 464 Mich 456, 462; 628 NW2d 515 (2001). Because there is no direct evidence of discrimination, plaintiff's claims of discrimination are examined under the framework set forth in *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). See *Lind v Battle Creek*, 470 Mich 230, 238-239; 681 NW2d 334 (2004). Under the *McDonnell Douglas* framework, a plaintiff may " 'present a rebuttable prima facie case on the basis of proofs from which a factfinder could *infer* that the plaintiff was the victim of unlawful discrimination.' " *Hazle*, 464 Mich at 462, quoting *DeBrow v Century 21 Great Lakes, Inc (After Remand)*, 463 Mich 534, 537-538; 620 NW2d 836 (2001). A plaintiff must first offer a prima facie case of discrimination by presenting evidence that "(1) she belongs to a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) the job was given to another person under circumstances giving rise to an inference of unlawful discrimination." *Hazle*, 464 Mich at 463. "An employee is qualified if he was performing his job at a level that met the employer's legitimate expectations." *Town v Michigan Bell Tel Co*, 455 Mich 688, 699; 568 NW2d 64 (1997) (Opinion by BRICKLEY , J.).

And "once a plaintiff establishes a prima facie case of discrimination, the defendant has the opportunity to articulate a legitimate, nondiscriminatory reason for its employment decision in an effort to rebut the presumption created by the plaintiff's prima facie case." *Hazle*, 464 Mich at 464. "The articulation requirement means that the defendant has the burden of producing evidence that its employment actions were taken for a legitimate, nondiscriminatory reason." *Id.* In order to survive a motion for summary disposition, a plaintiff "must demonstrate that the evidence in the case, when construed in the plaintiff's favor, is sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken by the employer toward the plaintiff," and thus the plaintiff must raise a "triable issue" that the defendant's proffered reason was a pretext for unlawful discrimination. *Id*. at 465-466 (quotation marks and citations omitted).

There are three ways the plaintiff may show that the defendant's stated legitimate, nondiscriminatory reason for its employment decision was pretext: "(1) by showing the reasons had no basis in fact, (2) if they have a basis in fact, by showing that they were not the actual factors motivating the decision, or (3) if they were factors, by showing that they were jointly insufficient to justify the decision." *Debano-Griffin v Lake Co*, 493 Mich 167, 180; 828 NW2d 634 (2013) (quotation marks and citation omitted). "The soundness of an employer's business judgment, however, may not be questioned as a means of showing pretext." *Id*. (quotation marks and citation omitted).

In March 2016, during plaintiff's probationary period after being hired, plaintiff received a "Quality Assurance Evaluation" where seven of the nine calls that were evaluated showed several deficiencies. In November 2016, Watkins reassigned plaintiff to the "probationary ESDO class" because plaintiff was "in need of INTENSE REMEDIATION for just basic 9-1-1." In March 2017, plaintiff met with Watkins to discuss "returning to the Dispatch floor" from classroom training, and while Watkins advised plaintiff that "it was not a good idea," Watkins ultimately agreed with plaintiff's request while advising plaintiff that she would be subject "to progressive corrective/disciplinary action."

In May 2017, defendant suspended plaintiff for three workdays because she failed to comply with defendant's procedures during two emergency services calls. The memorandum detailing plaintiff's errors was authored by Senior ESDO Sharon Coats, and she found that plaintiff provided untrue statements regarding her errors during the first call, which concerned a hit and run, and that plaintiff did not attempt to ask the appropriate questions of the caller under the applicable protocol, and Coats expressed that she "could not understand" why plaintiff "was confused as to which determinant code" to use for the call given plaintiff's training. While Coats found that plaintiff's errors constituted a Corrective Disciplinary Actions Group Offense I of "poor work performance of low severity" under defendant's progressive discipline policy, Watkins reviewed Coats's memorandum and instead concluded that plaintiff's errors constituted a Corrective Disciplinary Actions Group III of Insubordination.

In June 2017, Watkins authored a memorandum that recommended plaintiff receive an "Oral Reinstruction" for failing to upgrade a "police run service to a Priority One." In August 2017, defendant suspended plaintiff for ten workdays for a Corrective Disciplinary Actions Group III Offense of Insubordination on the basis of the recommendation of a July 2017 memorandum authored by Coats, and endorsed by Watkins, which detailed how plaintiff repeatedly failed to follow defendant's procedures during a series of three emergency calls in July 2017.

On October 8, 2017, Watkins filed a memorandum that recommended plaintiff be suspended for 30 days "with a recommendation for Discharge" because plaintiff's failure to follow defendant's procedures during a medical emergency call resulted in many errors, including plaintiff's attempting to dial a "language line" from memory and instead twice calling a commercial cellular service provider, disconnecting from the caller, and causing at least a 14-minute delay in the dispatch of emergency services. Watkins's recommendation to suspend and discharge plaintiff was also based on the remediation and "corrective action[s]" plaintiff received in the preceding 16 months.

Plaintiff admitted in her written statement regarding the problematic call that she did "not have a logical excuse" for trying to call the language line phone number multiple times from memory rather than looking up the number. According to Watkins, after she recommended plaintiff's final suspension and termination the ultimate decision whether to terminate plaintiff rested with "HR" and "the chief's office," and no one notified her regarding the decision to terminate plaintiff.

Ultimately, the trial court granted summary disposition of plaintiff's age discrimination claims on the grounds that plaintiff produced "absolutely no evidence that she was qualified" for her job, and that the available evidence indicated that "from month three in her probationary period until the time she was fired" plaintiff's record was "replete with instances where she failed to follow instructions and seriously deprived" callers of urgent medical care. Plaintiff contends that the trial court erroneously conflated defendant's evidence in support of its nondiscriminatory explanation for its actions with plaintiff's requirement to show that she was qualified for her position. We note that the court ruled that plaintiff failed to support her prima facie case because she provided "absolutely no evidence that she was qualified" for her position, and agree that plaintiff did not carry her primary burden of providing any evidence that she was performing her job at a level that met defendant's legitimate expectations. *Town*, 455 Mich at 699.

Nonetheless, plaintiff asserts on appeal that defendant's having hired her in the first instance, then permitting her to leave training, supports an inference that she was qualified. But plaintiff does not explain how those basic actions support an inference that plaintiff was meeting defendant's legitimate

expectations, especially where plaintiff herself admitted to making errors that she could not logically explain. Plaintiff did not point to any evidence that she was actually proficient in the skills necessary to operate as an ESDO at a level that actually met defendant's legitimate expectations. Therefore, the trial court did not err when it ruled that plaintiff failed to provide any evidence to show that she was qualified, and the trial court did not err in granting summary disposition of her age discrimination claims.

IV. RETALIATION

Plaintiff additionally submits that the trial court erred when it ruled that there was no evidence of a causal connection between plaintiff's filing of an EEOC charge and her termination. We disagree.

Under the CRA, "an employer is liable if it retaliates against an employee for having engaged in protected activity, e.g., opposing a violation of the Act's antidiscrimination provision." *White v Dep't of Transp*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 349407), slip op at 5. The CRA provides as follows:

> Two or more persons shall not conspire to, or a person shall not:
>
> (a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act. [MCL 37.2701(a).]

And the ADEA provides as follows:

> It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter. [29 USC 623(d).]

To establish a prima facie case of retaliation under the CRA, a plaintiff must show "(1) that the plaintiff engaged in a protected activity, (2) that this was known by the defendant, (3) that the defendant took an employment action adverse to the plaintiff, and (4) that there was a causal connection between the protected activity and the adverse employment action." *Meyer v Center Line*, 242 Mich App 560, 568-569; 619 NW2d 182 (2000). The same requirement applies to ADEA retaliation claims. *Blizzard v Marion Technical College*, 698 F3d 275, 288 (CA 6, 2012).[3]

[3] Plaintiff contends that the decisions of the United States Court of Appeals for the Sixth Circuit interpreting the ADEA are binding on this Court. Plaintiff is mistaken. "Although state courts are bound by the decisions of the United States Supreme Court construing federal law, there is no similar obligation

"To establish causation, the plaintiff must show that his participation in activity protected by the CRA was a 'significant factor' in the employer's adverse employment action, not just that there was a causal link between the two." *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001), overruled in part on other grounds by *Maldonado*, 476 Mich at 388. "A causal connection can be established through circumstantial evidence, such as close temporal proximity between the protected activity and adverse actions, as long as the evidence would enable a reasonable fact-finder to infer that an action had a discriminatory or retaliatory basis." *Rymal v Baergen*, 262 Mich App 274, 303; 686 NW2d 241 (2004). Similarly, under the ADEA, causation may be shown where the plaintiff offers evidence to raise the inference that a protected activity was the likely reason for the adverse employment action. *Lindsay v Yates*, 578 F3d 407, 418 (CA 6, 2009).

Plaintiff filed her EEOC charge against defendant in August 2017. During her deposition, plaintiff confirmed that she did not tell anyone other than her attorney that she filed an EEOC charge. On October 8, 2017, Watkins filed a memorandum that recommended plaintiff be suspended for 30 days "with a recommendation for Discharge." As discussed above, Watkins testified that after she recommended plaintiff's final suspension and termination the ultimate decision whether to terminate plaintiff rested with "HR" and "the chief's office," and that no one notified her regarding the decision to terminate plaintiff.

On October 10, 2017, Johnson, the "EEO/ADA Coordinator" for the Detroit Police Department, sent an e-mail to Tennille, an "Employee Services Consultant" for the Department, asking for "information" regarding plaintiff's EEOC charge. The next morning, Tennille sent a message to Johnson and Watkins asking Watkins to call Johnson at her earliest convenience because Watkins was the best qualified to "go into depth" regarding plaintiff. On October 12, 2017, defendant issued a notice to plaintiff that informed her that she was suspended for 30 days with a recommendation for discharge.

Ultimately, the trial court ruled that plaintiff's retaliation claims were unavailing because plaintiff could not demonstrate a causal relationship between plaintiff's filing of an EEOC charge and her termination where Watkins did not know of the charge when she recommended plaintiff's termination. Plaintiff asserts that the trial court failed to recognize a question of fact in that regard. However, plaintiff does not identify the evidence that demonstrates the existence of any question regarding when Watkins learned of the EEOC charge, and plaintiff concedes that "it appears Defendant did not actually receive the notice until early October." The evidence shows only that Watkins may have learned about plaintiff's EEOC charge no earlier than October 11, 2017, when Tennille directed her to call Johnson. Absent any evidence that Watkins was actually aware of plaintiff's EEOC charge, plaintiff cannot show a causal connection between plaintiff's protected activity and Watkins's recommendation to terminate plaintiff.

Plaintiff also asserts that the trial court erred by focusing on the October 8, 2017 date of Watkins's recommendation to terminate plaintiff, on the grounds that the actual adverse employment actions were

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with respect to decisions of the lower federal courts." *Abela v Gen Motors Corp*, 469 Mich 603, 606; 677 NW2d 325 (2004) (citation omitted). While "lower federal court decisions may be persuasive, they are not binding on state courts." *Id*. at 607.

when plaintiff was actually suspended on October 12, 2017, and informed of her termination on October 16, 2017, and that Watkins was undisputedly aware of plaintiff's EEOC charge as of those dates.

Even if Watkins had notice that plaintiff filed an EEOC charge when plaintiff's suspension and termination went into effect, plaintiff's contentions are unavailing. Watkins testified that she merely *recommended* that plaintiff be terminated, and that the ultimate decision whether to terminate plaintiff rested with others, and that no one notified her regarding the decision to terminate plaintiff. Plaintiff provides no evidence to permit an inference that the individuals who approved Watkins's recommendation had notice of plaintiff's EEOC charge, or that there was otherwise any relationship between plaintiff's discharge and her filing of an EEOC charge.

Plaintiff also contends that the trial court applied an "overly stringent" causation requirement, having relied upon *West v Gen Motors Corp* 469 Mich 177, 184; 665 NW2d 468 (2003) to articulate the causation requirement for CRA retaliation claims even though that decision pertained to a whistleblower claim brought under a different statute. Plaintiff's contention is unavailing because even under the causation standard articulated for CRA and ADEA retaliation claims, *Rymal*, 262 Mich at 303; *Lindsay*, 579 F3d at 418, plaintiff failed to provide any evidence that would permit a reasonable factfinder to infer that plaintiff's termination had a retaliatory basis. Therefore, plaintiff is unable to show that the trial court erred.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Kirsten Frank Kelly
/s/ Michael J. Riordan