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Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1150

Damon Doss,
Appellant,

vs.

St. Paul Area Electrical JATC Registered Apprenticeship Program,
Respondent.

Filed February 28, 2022
Affirmed in part, reversed in part, and remanded
Reilly, Judge

Ramsey County District Court
File No. 62-CV-19-5493

Stephen W. Cooper, Stacey R. Everson, The Cooper Law Firm, Chartered, Minneapolis, Minnesota (for appellant)

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Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Klaphake, Judge.*

NONPRECEDENTIAL OPINION

REILLY, Judge

In this employment-discrimination case, appellant sued respondent, an apprenticeship program, alleging that he was subject to racial discrimination and

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

wrongfully discharged from the program. Appellant brought claims of discrimination under the Minnesota Human Rights Act (MHRA) and Title VII, violation of 42 U.S.C. § 1981 (section 1981), negligence per se, and breach of contract. On appeal, appellant argues that the district court erred by granting summary judgment for respondent on all claims. We affirm the district court's grant of summary judgment on appellant's claims of negligence per se and breach of contract. But because we conclude that the record presents genuine issues of material fact on appellant's claims of discrimination under the MHRA and Title VII, as well as section 1981, we reverse the district court's grant of summary judgment on those claims and we remand for further proceedings.

FACTS

This case centers on appellant Damon Doss's participation as an apprentice in a program administered by respondent St. Paul Area JATC Registered Apprenticeship Program (JATC). JATC is a private, nonprofit organization that operates an electrician apprenticeship program. The Minnesota Department of Labor and Industry (the department) registers and reviews apprenticeship programs like JATC, and the department approves all program policies that JATC adopts. *See* Minn. Stat. § 178.035 (2020).

Under the apprenticeship program, JATC provides electrical training to apprentices and assigns them to on-the-job training at various job sites with third-party employers. The employer, rather than JATC, decides the length of an apprentice's assignment, based on the apprentice's abilities and the employer's business needs. The apprenticeship program ordinarily takes about five years for an apprentice to complete. When Doss was an apprentice, several hundred apprentices and about 115 third-party employers participated

in the program. The JATC policy contained provisions that the program would not discriminate against apprentices based on race, and that JATC would take affirmative action steps to increase minority participation in the program.

Doss's apprenticeship with JATC

Doss began his apprenticeship through JATC in April 2015. Doss is African American. Throughout his initial participation in the program, Doss was assigned to 14 different employers in a span of less than three years. This was far more job assignments than typical, as apprentices generally received five or six assignments over the course of their five-year apprenticeship.

According to Doss, his employers regularly treated him differently from other apprentices and he was sometimes subject to racial remarks. At his second job assignment, his supervisor told him, "I don't know about your work ethic, but don't be here just because you are black." During his third job assignment, the foreperson segregated him from the other workers and did not provide him with hands-on work instruction. Doss filed a formal complaint with the department. After Doss made the report, the JATC training director chastised him for reporting the incident, saying that it "caused a whole other chain of events." Doss's supervisor for another job site commented, "if this goes wrong, we'll blame it on the minority apprentice," and said to him, "you have it bad, you are black and an apprentice." At yet another job assignment, the foreman said in front of Doss, "Did you know that Minnesota has a ni--er lake?" Doss contacted the Labor Standards and Apprenticeship Division about his treatment, and he also told the training director that he was not receiving on-the-job training.

JATC ultimately discharged Doss from the apprenticeship program after he received five unsatisfactory reviews. Under the previous version of JATC's disciplinary policy, an apprentice who received a fourth unsatisfactory evaluation would appear before the JATC committee for possible removal from the program. JATC revised the policy, effective September 29, 2016, to alter the appropriate action that JATC would take after each unsatisfactory employer evaluation. The new policy mandated that an apprentice would be removed from the program after a fifth unsatisfactory evaluation.

Because Doss received more job assignments than most apprentices, he was also evaluated more often. A worker for JATC acknowledged that the program depended on the performance reviews made by employers when evaluating an apprentice's work. JATC workers did not speak with any of the employers who gave Doss a negative evaluation. The JATC worker said that the program did not seek to determine whether the evaluators were making racially biased decisions, and that it "wasn't [JATC's] responsibility" to make sure that the evaluators were not influenced by race. JATC also admitted that "a significant portion of third-party employers" did not submit performance evaluations for apprentices who worked for them.

Doss received unsatisfactory evaluations for his first three job assignments. His first unsatisfactory review, in July 2015, commented that Doss was "inexperienced" and "needs more exposure to the field." Doss received a second unsatisfactory review in November 2015. That review stated, "You can tell he had no training. He didn't have a clue. I wish there was training provided prior to sending him out on a job." The third unsatisfactory review, in January 2016, stated that Doss "need[ed] to listen to direction

better," "was very quick to place blame on someone else for his errors," and "need[ed] to learn how to use his time better so he can become more productive." The second review came from the employer where the supervisor told Doss, "don't be here just because you are black," and the third review was written by the same foreperson Doss had filed a complaint against for segregating him. Another employer sent JATC a "Do not send back" request about Doss.

After his first three job assignments, JATC assigned Doss to various other employers, several of which gave him positive performance reviews. One review commented that Doss had a "good attitude" and that he would "be a very good asset" to the company. Some of Doss's coworkers echoed this sentiment. An electrician who worked with Doss and regularly observed his work said that Doss "was a hard worker who didn't complain." According to the coworker, Doss had a strong work ethic, was willing to follow directions, and willingly took on job responsibilities. Similarly, a lead electrician who worked closely with Doss for six months said that Doss "did as he was directed" and performed his tasks well. The coworker stated that he found Doss to be "productive and a good listener with an appetite for learning," and that he believed Doss had the potential to be a good electrician.

In August 2016, however, Doss received a fourth unsatisfactory review. That evaluation commented that Doss "need[ed] more drive to want to learn and do a good job," and that he was laid off because the project to which he was assigned "needed a more advanced apprentice." After that unsatisfactory review, Doss appeared before the committee, which issued a one-week non-working suspension and required monthly

employer evaluations. Almost a year and a half later, Doss received a fifth unsatisfactory review in January 2018.

Following the fifth unsatisfactory review, Doss appeared before the committee. The committee discussed his unsatisfactory evaluations and asked Doss if he believed some or all of those evaluations were racially motivated. Doss told the committee that he was concerned about "white privilege," but said that he did not believe the unsatisfactory evaluations were racially motivated. The training director told the committee that Doss had not approached him about allegations of racism. After Doss said that he had had trouble receiving instructions on one of his assignments, the training director became upset, called Doss a liar, and left the meeting before it was adjourned. The training director then had a verbal altercation with Doss in the hallway. The training director became hostile and yelled in Doss's face that he was a "lying b-stard." Ultimately, the committee voted to remove Doss from the program due to his fifth unsatisfactory review and "repeated infractions," pursuant to the JATC disciplinary policy.

In March 2018, Doss again appeared before the committee to appeal the removal decision. The committee voted to accept Doss back into the program, on the understanding that he would be removed again for any future violations of JATC's disciplinary policies. Doss received two more unsatisfactory employer evaluations in July and August 2018, both from the same employer. Another employer sent JATC a request to lay off Doss as a reduction in force, commenting that Doss likely would not "make it in this trade without a ton of one[-]on[-]one help." The committee then voted to remove Doss from the program. This time the removal was permanent.

Civil action

Doss brought a civil action against JATC in June 2019.[1] The complaint alleged generally that Doss was subject to racially discriminatory practices with the employers, that JATC treated him differently from other apprentices, and that it wrongfully discharged him from the apprenticeship program. The complaint brought several claims against JATC, including breach of contract, violation of the MHRA and Title VII, negligence per se, and violation of section 1981.

After discovery, JATC moved for summary judgment, arguing that Doss failed to show a genuine issue of material fact on any of his claims. The district court granted summary judgment for JATC on all claims. The district court determined that Doss could not meet his burden on his employment-discrimination claims, reasoning that the evidence showed that JATC removed Doss from the apprenticeship program because of five unsatisfactory reviews, and the evidence did not establish that this was a pretext for

[1] In April 2018, Doss filed a complaint with the department under Minn. Stat. § 178.09 (2020), alleging that JATC violated his apprenticeship agreement and equal opportunity standards when it discharged him from the program. The department director issued a determination that JATC did not violate the agreement and the hearing board affirmed the director's determination. Doss appealed to this court by certiorari and we affirmed the determination. *In re St. Paul Area Elec. JATC Registered Apprenticeship Program*, No. A19-0407, 2019 WL 6838620 (Minn. App. Dec. 16, 2019). As the district court noted, Doss's civil action is independent of the agency action. Given the different standards of review that we apply to the different actions, our previous decision does not resolve this case. *Compare Kind Heart Daycare, Inc. v. Comm'r of Human Servs.*, 905 N.W.2d 1, 9 (Minn. 2017) (explaining that agency decisions "enjoy a presumption of correctness and warrant deference" by appellate courts (quotation omitted)), *with Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (stating that appellate courts review grants of summary judgment de novo to determine whether there are genuine issues of material fact).

discharging him. The district court also determined that JATC was entitled to summary judgment on Doss's claims of breach of contract, negligence per se, and violation of section 1981.[2]

Doss appeals.

DECISION

Doss challenges the district court's grant of summary judgment for JATC. We review a grant of summary judgment de novo. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). We determine "whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Id.* (quotation omitted).

A party is entitled to summary judgment when "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 753 (Minn. 2005); *see also* Minn. R. Civ. P. 56.01. "Summary judgment is a blunt instrument that is inappropriate when reasonable persons might draw different conclusions from the evidence presented." *Montemayor*, 898 N.W.2d at 628 (quotations omitted). We view the evidence in the light most favorable to the nonmoving party. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). We must not weigh facts or make credibility determinations, and "[a]ll doubts and factual inferences must be resolved against the moving party." *Montemayor*,

[2] Doss also brought claims of negligence, violation of 42 U.S.C. § 1983, and defamation; the district court granted summary judgment for JATC on those claims as well. Doss does not challenge the district court's decision about those claims.

898 N.W.2d at 628 (quotation omitted). But a genuine issue of material fact "must be established by substantial evidence" and may not be shown based on "unverified and conclusory allegations or metaphysical doubt about the facts." *McBee v. Team Indus., Inc.*, 925 N.W.2d 222, 230 (Minn. 2019) (quotations omitted).

We apply these standards to each claim for which the district court granted summary judgment for JATC.

I. The district court erred by granting summary judgment on Doss's MHRA and Title VII claims.

At the heart of this case are Doss's claims alleging violations of the MHRA and Title VII. State law, under the MHRA, and federal law, under Title VII, prohibit employers from discriminating against or discharging employees based on race. Minn. Stat. § 363A.08, subd. 2 (2020); 42 U.S.C. § 2000e-2(a) (2018). When interpreting the MHRA, Minnesota appellate courts may look to federal cases arising under Title VII. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

Plaintiffs alleging discrimination under the MHRA may use either direct or circumstantial evidence to prove that the employer acted with discriminatory intent. *Hoover v. Norwest Priv. Mortg. Banking*, 632 N.W.2d 534, 542 (Minn. 2001). Doss argues that his racial-discrimination claim survives summary judgment whether based on direct evidence or circumstantial evidence. He also argues that his discrimination claim survives based on a theory of reprisal. We address each argument in turn.

A. Doss has not presented direct evidence of racial discrimination.

Direct evidence of racial discrimination "shows that the employer's discrimination was purposeful, intentional or overt." *Goins v. W. Grp.*, 635 N.W.2d 717, 722 (Minn. 2001). Direct evidence may exist when an employer's statement or policy is discriminatory on its face. *Id.* This court recently explained the type of evidence that constitutes direct evidence. Direct evidence requires "a specific link between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the adverse employment action." *Henry v. Indep. Sch. Dist. #625*, 964 N.W.2d 667, 676 (Minn. App. 2021) (quoting *Aulick v. Skybridge Ams., Inc.*, 860 F.3d 613, 620 (8th Cir. 2017)), *rev. granted* (Minn. Oct. 19, 2021). Examples of direct evidence include "evidence of actions or remarks of the employer that reflect a discriminatory attitude, comments which demonstrate a discriminatory animus in the decisional process, or comments uttered by individuals closely involved in employment decisions." *Id.* (quoting *King v. United States*, 553 F.3d 1156, 1161 (8th Cir. 2009)). On the other hand, stray remarks made in the workplace, or by individuals who do not take part in the discharge decision, are not direct evidence of discrimination. *Diez v. Minn. Mining & Mfg.*, 564 N.W.2d 575, 579 (Minn. App. 1997), *rev. denied* (Minn. Aug. 21, 1997).

Doss argues that the following facts show direct evidence of discrimination. JATC does not use reliable evaluations and cannot ensure that the performance reviews are not tainted by racial bias. The program has higher attrition rates for women and minority apprentices, and almost no African American apprentices have graduated from the

program. Some employers who evaluated Doss made racial comments and JATC relied on those unsatisfactory evaluations when deciding to discharge Doss.

None of these circumstances are direct evidence of discrimination. They do not show a direct link between discriminatory animus and the decision to discharge Doss. While racist comments may be direct evidence in some cases, here those comments were made by workers with some of Doss's third-party employers, not by JATC officials, who made the decision to discharge him.[3] Doss therefore cannot survive summary judgment based on direct evidence of discrimination.

B. Doss has made a sufficient showing of circumstantial evidence of racial discrimination to satisfy the three-prong *McDonnell Douglas* test.

When the record does not contain direct evidence of discrimination, an employee may show discriminatory motive through circumstantial evidence. *See Goins*, 635 N.W.2d at 723-24. Courts analyze employment-discrimination claims based on circumstantial evidence by applying the three-part burden-shifting framework established by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Hansen v. Robert Half Int'l, Inc.*, 813 N.W.2d 906, 918 (Minn. 2012). The purpose of this framework is "to disprove the most obvious legitimate bases for the employment decision, thereby allowing the inference that the decision was motivated by discrimination." *Friend v. Gopher Co.*, 771 N.W.2d 33, 37 (Minn. App. 2009). Before the district court, Doss argued a "mixed-motive" theory. A plaintiff may prevail under a mixed-motive theory by

[3] As explained below, however, some of these circumstances are relevant under the "pretext" prong of the circumstantial-evidence analysis.

showing that "an employment decision was based partly on legitimate motives and partly on unlawful ones." *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996).

The *McDonnell Douglas* framework has three prongs: (1) the plaintiff must make a prima facie case of discrimination; (2) if a prima facie case is shown, "the burden then shifts to the employer to articulate a legitimate and nondiscriminatory reason" for the allegedly discriminatory action; and (3) the burden shifts back to the plaintiff to show that the employer's proffered explanation is a pretext for discrimination. *Hansen*, 813 N.W.2d at 918. We examine each prong in turn.

i. Prima facie case

The first prong of the *McDonnell Douglas* test requires the plaintiff to show a prima facie case of racial discrimination. *Id.* The requirements of a prima facie case vary depending on the type of employment decision at issue. *Friend*, 771 N.W.2d at 37. A prima facie case for discriminatory discharge generally requires the employee to show that: (1) he is a member of a protected class; (2) he was qualified for his job; (3) he was discharged from his job; and (4) the employer assigned a person who is not a member of the protected class to perform the same work. *Hansen*, 813 N.W.2d at 918; *see also Goins*, 635 N.W.2d at 724 (listing three elements of a prima facie case for discriminatory discharge, as requiring that the employee "(1) is a member of a protected class, (2) was qualified for the position from which [he] was discharged, and (3) was replaced by a non-member of the protected class" (quotation omitted)). The burden to show a prima facie case "is not onerous." *Henry*, 964 N.W.2d at 677.

Here, the parties do not dispute that the first and third elements are met. Doss is a member of a protected class because he is African American, and JATC discharged him as an apprentice. We conclude that the fourth element is also met because the record shows that the apprentices whom JATC hired after Doss's discharge were mostly white.

The parties mainly dispute whether the second element was met—whether Doss was qualified for the job. The district court determined, and JATC argues, that Doss did not meet his burden to show that he was qualified because he received five negative performance reviews. Doss, on the other hand, maintains that his performance reviews do not show that he is unqualified and that ample evidence in the record proves his qualifications as an apprentice. We agree with Doss that he has met his burden.

The record shows that Doss received multiple positive performance reviews. Several of the positive reviews reflected that Doss was productive, performed his work accurately, was careful and responsible in his work, and had the abilities necessary for the electrical trade. Doss's coworkers who worked with him on some of his job sites attested that he performed his tasks well. Doss also regularly attended and completed electrician classes to improve his skills. These facts all support Doss's position that he was qualified for the apprenticeship program.

The district court, in determining that Doss failed to show that he was qualified for the job, erred by relying only on Doss's negative performance reviews. While Doss's multiple negative performance reviews could allow a jury to conclude that Doss lacked certain skills and experience for the apprenticeship program, at the summary-judgment stage, we must view the evidence in the light most favorable to Doss. *STAR Ctrs.*, 644

N.W.2d at 76-77. And at the prima facie case prong of the *McDonnell Douglas* test, the plaintiff need not disprove the employer's reason for firing him. *Lake v. Yellow Transp., Inc.*, 596 F.3d 871, 874 (8th Cir. 2010). Because Doss received some positive reviews and some negative reviews, we believe that this creates a factual question for a jury on Doss's exact level of qualification as an electrician. Viewing the record in a light favorable to Doss, the facts in the record are enough to show that Doss met the minimal qualifications of the apprenticeship program. He therefore satisfies the prima face case prong of the *McDonnell Douglas* test.

ii. Legitimate, nondiscriminatory reason

Because Doss has made a prima facie showing of racial discrimination, the burden then shifts to JATC to show a legitimate, nondiscriminatory reason for discharging him. *See Hansen*, 813 N.W.2d at 918. We conclude that JATC easily satisfies that burden. JATC's policy to discharge apprentices after five unsuccessful evaluations was a legitimate and nondiscriminatory reason to discharge Doss.

We are not persuaded by Doss's arguments to the contrary. He points to the admission by a JATC worker during a deposition that the decision to set the number of negative evaluations at five "was pulled out of the air." We do not think that the JATC worker's response to a single leading question on cross-examination is enough to create a factual dispute on the legitimacy of the policy. Doss also notes that only five of the thirteen evaluations he received were unsatisfactory. But an employer is not legally required to balance an employee's positive and negative evaluations before deciding whether to terminate the employee. We are satisfied that the policy is legitimate on its face. JATC

adopted the revised policy in September 2016 only after approval by the department. As the district court reasoned, "The [c]ommittee had the discretion, with [the department's] approval, to determine at what threshold an apprentice no longer merited membership in the [p]rogram." Thus, JATC's five-unsatisfactory-reviews policy is enough to satisfy the second prong of the *McDonnell Douglas* test.

iii. Pretext for discrimination

Because JATC has met its burden to show that its proffered reason for discharging Doss was legitimate and nondiscriminatory, the burden shifts back to Doss to show that the reason was pretextual. *See Hansen*, 813 N.W.2d at 918. A plaintiff may sustain this burden "either directly by persuading the court that a discriminatory reason likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986) (quotation omitted). Viewing the evidence in the light most favorable to Doss, we conclude that the record supports the inference that JATC's proffered explanation was pretextual. We reach this determination based on two sets of facts.

First, Doss has shown a genuine issue of material fact that at least some of the five unsatisfactory performance reviews that sustained his discharge may have been tainted by bias. His second unsatisfactory review came from the job site where Doss's supervisor told him, "don't be here just because you are black." His third unsatisfactory review was written by the foreperson whom Doss had filed a written complaint against for segregating him from the other workers. JATC counters that it is "separate and distinct from the third-party employers at issue." But the record shows that JATC relied only on the third-party

employers' performance reviews when deciding to discharge Doss, and it did not follow up with any of the employers who submitted a negative evaluation. An employer cannot insulate itself from potentially biased evaluations made by third parties when it relied on those evaluations when deciding to terminate an employee. *See Staub v. Proctor Hosp.*, 562 U.S. 411, 420-21 (2011) (recognizing that a biased employee report made by a non-decisionmaking supervisor may be a causal factor in an employer's decision to terminate an employee when the decisionmaker took the supervisor's report into account without independently determining whether the adverse action was justified). These facts, viewed in a light favorable to Doss, give rise to the inference that at least two of the five unsatisfactory performance reviews could have been motivated by racial bias, and JATC blindly accepted those reviews when it decided to discharge him.

Second, the record supports that Doss was treated differently from other apprentices. Doss is the only apprentice who was discharged under the policy requiring discharge after five unsatisfactory evaluations.[4] And Doss was assigned to 14 different employers, when apprentices normally were assigned to just five or six during the apprenticeship. As a result, he was subject to far more performance reviews than normal and a greater chance at receiving negative reviews. Although the third-party employers, rather than JATC, determined the length of an apprentice's job assignments, JATC acknowledged that "a

[4] JATC asserts that another apprentice, who is white, also received five unsatisfactory performance evaluations from third-party employers and was also discharged. But the apprentice to which JATC refers was discharged in July 2015, which was before the five-unsatisfactory-evaluations policy took effect. Doss is therefore the only apprentice who was discharged in accordance with that policy.

significant portion of third-party employers" never submitted performance evaluations for their apprentices. The record therefore supports that JATC did not uniformly require performance reviews for all apprentices. Even if the greater number of job placements Doss received was not necessarily attributable to JATC, it is responsible for the greater number of performance reviews that Doss received. And an employer's failure to follow its own policies may support an inference of pretext. *Lake*, 596 F.3d at 874. In short, Doss was subject to a far greater number of performance reviews—and therefore a higher likelihood of negative reviews—than most other apprentices in the program.

We conclude that these facts, taken together, are sufficient to create a genuine issue of material fact as to pretext. Pretext may be inferred from a combination of facts showing a biased atmosphere and unreliable methods of evaluating employees. In *Hamblin v. Alliant Techsystems, Inc.*, this court reversed the grant of summary judgment on a claim of disparate treatment in an age-discrimination case. 636 N.W.2d 150, 155 (Minn. App. 2001), *rev. denied* (Minn. Feb. 19, 2002). We determined that the employee had shown a genuine issue of material fact on the pretext prong by presenting statistical evidence about terminated employees, evidence of ageist comments made by corporate executives, and a lack of uniformity in the criteria for ranking employees. *Id.* at 153-55. As for the ageist comments, we recognized that, even when such comments were made by non-decisionmakers, they constituted evidence of a biased atmosphere, which supported a reasonable inference of discrimination. *Id.* at 154. Similarly, here Doss has shown facts that, in combination, reasonably give rise to the inference that his discharge was influenced by race. He has presented evidence of racial statements and practices by employers who

later gave him negative reviews, JATC's reliance on those negative reviews in discharging him, and a practice that caused him to have a greater likelihood of receiving negative reviews than most other apprentices. Viewing this evidence in the light most favorable to Doss, we conclude that Doss has put forward enough facts to show pretext.

In reaching this conclusion, we acknowledge that some facts in the record support JATC's position that Doss's termination may not have been pretextual. JATC reinstated Doss in the program and then removed him permanently only after he received more negative reviews. But for purposes of our analysis, Doss need not definitively prove pretext; he need only "put forth sufficient evidence for the trier of fact to infer" pretext. *Hoover*, 632 N.W.2d at 546. And the evidence, viewed in a light favorable to Doss, would reasonably allow a fact-finder to infer that JATC's proffered reason for discharging Doss was a pretext for racial discrimination.[5]

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[5] We recognize that our decision here differs from our previous decision in the agency action, in which we affirmed the department's determination that Doss's discharge did not violate the apprenticeship agreement. In that case, we determined that Doss's termination from the apprenticeship program was supported by substantial evidence and not arbitrary or capricious. *St. Paul Area Elec. JATC*, 2019 WL 6838620, at *5. As noted above, we are not bound by that decision. We reach a different decision here based on our different standards of review—in the administrative appeal, we reviewed whether there was substantial evidence in the record to support the agency's decision, Minn. Stat. § 14.69(e) (2020), while here, we review for genuine issues of material fact precluding summary judgment, *Montemayor*, 898 N.W.2d at 628. Even though we affirmed the agency decision, we also expressed some of the same concerns that we rely on in reaching our decision here:

> We do think that it is concerning that Doss was sent to 13 different jobsites in less than three years, when the average apprentice has only five or six during their five-year term as an apprentice. We additionally think it is concerning that Doss received at least one of his negative reviews before he had

Thus, we conclude that Doss has satisfied his burden under the *McDonnell Douglas* test, and his employment-discrimination claims survive summary judgment. We reverse the district court's grant of summary judgment on these claims, and we remand for further proceedings.

C. The record does not show any genuine issue of material fact to support Doss's claims on a theory of reprisal.

Doss also argues his discrimination claims under a theory of reprisal. He argues that there is a genuine issue of material fact whether JATC retaliated against him when he complained about racial discrimination. We disagree.

It is an unfair discriminatory practice for an employer to engage in a reprisal because an employee opposed a practice forbidden by the MHRA. Minn. Stat. § 363A.15 (2020). Reprisal claims are also analyzed under the *McDonnell Douglas* test. *Hoover*, 632 N.W.2d at 548. To make a prima facie case for reprisal, a plaintiff must show three elements: "(1) statutorily-protected conduct by the employee; (2) adverse employment action by the employer; and (3) a causal connection between the two." *Id.*

We conclude that Doss cannot make a prima facie case of reprisal because he cannot show a causal connection between his statutorily protected conduct and the adverse employment action. Doss mainly points to the February 12, 2018 committee meeting as evidence of reprisal. He notes that, at that meeting, after he complained about racial

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> received any training as an electrician. And that one of these reviews was filled out by an employer that Doss complained about to the director.

St. Paul Area Elec. JATC, 2019 WL 6838620, at *5.

discrimination, the training director called him a liar, and the committee discharged him immediately afterward. Assuming that Doss's complaints at the meeting constitute statutorily protected conduct, the undisputed facts do not give rise to the reasonable inference that the committee decided to discharge him because of his complaints, even when we view the evidence in a light favorable to Doss. Under Doss's own version of events, the reason the training director grew angry was that he disputed Doss's contention that he did not receive sufficient training. Because the evidence does not show that Doss's confrontation with the training director resulted from Doss's complaints about discrimination, Doss cannot show a causal connection between his complaints and the committee's decision to discharge him. Doss therefore cannot satisfy the *McDonnell Douglas* test for reprisal.

In sum, while we reverse the district court's grant of summary judgment for JATC on Doss's MHRA and Title VII claims, we affirm the grant of summary judgment on his reprisal theory.

II. The district court erred by granting summary judgment for JATC on Doss's section 1981 claim.

Together with his MHRA and Title VII claims, Doss brought a related claim alleging that JATC violated his rights under section 1981. Section 1981 is a federal statute protecting the right of citizens "to make and enforce contracts." 42 U.S.C. § 1981(a). This right "includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." *Id.* (b). Courts apply the same analysis for section 1981 claims as for

Title VII claims. *Keefe v. City of Minneapolis*, 785 F.3d 1216, 1225 (8th Cir. 2015) (applying three-prong *McDonnell Douglas* test).

Here, the district court determined that Doss's section 1981 claim could not survive summary judgment for the same reasons as his employment-discrimination claims. Likewise, the parties do not provide any argument differentiating between Doss's MHRA and section 1981 claims. Because we reverse the district court's grant of summary judgment on Doss's MHRA claims, we also reverse the grant of summary judgment on the section 1981 claims and remand for further proceedings.

III. The district court correctly granted summary judgment for JATC on Doss's claims of negligence per se and breach of contract because those claims are barred by the MHRA's exclusivity provision.

Finally, Doss challenges the district court's grant of summary judgment on his claims of negligence per se and breach of contract. Doss's negligence per se claim is based on JATC's alleged violations of Minn. Stat. § 178.01 (2020) and 29 C.F.R. § 30.1, which provide for equal employment opportunities for apprentices in apprenticeship programs. His breach-of-contract claim is based on an antidiscrimination clause in his employment contract, which stated that he would be given equal opportunity in the apprenticeship program without discrimination based on race. The district court determined that Doss's negligence per se and breach-of-contract claims were both barred by the MHRA's exclusivity provision. We agree.

A party generally may bring claims under different statutes if the claims arise out of the same set of facts, "unless a statute provides that its remedy is exclusive." *Daniel v. City of Minneapolis*, 923 N.W.2d 637, 644 (Minn. 2019) (quotation omitted). The MHRA

contains such a provision, which states, "as to acts declared unfair by [the MHRA], the procedure herein provided shall, while pending, be exclusive." Minn. Stat. § 363A.04 (2020). Courts have held that the MHRA's exclusivity provision bars other claims based on the same set of facts. For example, the Minnesota Supreme Court has held that an employee alleging discriminatory practices under the MHRA cannot also bring a claim under Minnesota's Whistleblower Act. *Williams v. St. Paul Ramsey Med. Ctr., Inc.*, 551 N.W.2d 483, 483, 486 (Minn. 1996). And Minnesota's federal district court has recognized that a plaintiff pursuing claims under the MHRA may not bring negligence claims based on the same underlying facts, unless the negligence claims are "founded on a duty of care independent from duties owed under the MHRA." *Moss v. Advance Cirs., Inc.*, 981 F. Supp. 1239, 1252 (D. Minn. 1997) (determining that plaintiff's common-law negligence claims were barred because they arose from the same duty as her harassment claim under the MHRA); *see also Burns v. Winroc Corp. (Midwest)*, 565 F. Supp. 2d 1056, 1068-69 (D. Minn. 2008) (concluding that plaintiff's claims for negligent supervision and negligent retention were barred by MHRA's exclusivity provision because claims were based on employer's duty to address racial harassment in the workplace, which was imposed by MHRA).

Doss's claims of negligence per se and breach of contract are virtually identical to his claims of racial discrimination under the MHRA. The statutory duties that Doss refers to are the same that support his MHRA claims. And Doss argues that JATC breached the employment contract by violating antidiscrimination requirements—duties that the MHRA

governs. Thus, the MHRA's exclusivity provision bars the negligence per se and breach-of-contract claims.

We also note that Doss's breach-of-contract claim is further barred because a separate statute provides the remedy for alleged breaches of apprenticeship agreements. Minn. Stat. § 178.09. Under that statute, a person may bring a complaint with the department alleging a violation of an apprenticeship agreement and the department may investigate and determine whether any violation occurred. *Id.*, subd. 1. Doss previously filed a complaint with the department and this court affirmed the department's determination that JATC did not violate the apprenticeship agreement. *St. Paul Area Elec. JATC*, 2019 WL 6838620, at *1. Thus, Doss has already unsuccessfully litigated his claim that JATC breached the apprenticeship agreement, using the statutorily authorized procedure.

For these reasons, the district court correctly dismissed Doss's claims of negligence per se and breach of contract.

Affirmed in part, reversed in part, and remanded.