

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0526**

Zosha Winegar-Schultz,
Appellant,

vs.

University of Minnesota Board of Regents,
Respondent.

**Filed March 11, 2024
Affirmed
Slieter, Judge**

Ramsey County District Court
File No. 62-CV-20-3864

Christy L. Hall, Gender Justice, St. Paul, Minnesota (for appellant)

Douglas R. Peterson, General Counsel, Brian J. Slovut, Deputy General Counsel, Carrie Ryan Gallia, Senior Associate General Counsel, Office of the General Counsel of the University of Minnesota, Minneapolis, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Slieter, Judge; and Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the district court's summary-judgment dismissal of her complaint against respondent-employer for reprisal in violation of the Minnesota Human

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

Rights Act (MHRA), Minn. Stat. §§ 363A.01-.50 (Supp. 2023). Appellant’s reprisal action is premised on the claim that her employer knew that a fellow employee filed a false sexual-harassment complaint against her in retaliation for her sexual-harassment complaint against that same employee, and that the employer took no steps in response. Appellant claims that there are genuine issues of material fact to support her claim for discriminatory reprisal against her employer. Because there are no genuine issues of material fact demonstrating that respondent-employer took an adverse action against appellant, we affirm.

FACTS

The following facts derive from the record before the district court at summary judgment, which we consider in the light most favorable to the appellant.

Appellant Zosha Winegar-Schultz and John Doe, a nonparty to this action, were graduate-student-employees within the same department of respondent University of Minnesota in 2018 when they filed competing sexual-harassment complaints against each other with the university’s Equal Opportunity and Affirmative Action Office (EOAA).

According to the EOAA, Winegar-Schultz’s complaint alleged “that [Doe] sexually assaulted her in her apartment off campus in August of 2017,” and Doe’s complaint “accused [Winegar-Schultz] of stalking and/or sexual harassment based on her attempts to contact him (and others close to him) after he asked her to stop communicating with him,”

and alleged that Winegar-Schultz “sexually harassed him after their romantic relationship ended in the Fall of 2017.”¹

Winegar-Schultz learned that Doe had filed a sexual-harassment complaint against her when she received an email notification from the university, stating: “We recently received a report from [Doe] that you engaged in stalking and/or sexual harassment in January 2018, after he requested that you no longer contact him.”

The EOAA investigated the two sexual-harassment complaints and concluded that neither Winegar-Schultz nor Doe engaged in conduct that violated university policy. As part of the investigation, the EOAA also specifically considered Winegar-Schultz’s claim that Doe’s sexual-harassment complaint “was lodged in bad faith and in retaliation for her complaint that he sexually assaulted her.” Following its investigation, the EOAA determined that Doe filed his sexual-harassment complaint against Winegar-Schultz in good faith and that it was not retaliatory against her.

Winegar-Schultz appealed the EOAA determination to the university’s Student Sexual Misconduct Subcommittee (SSMS) and asked it, specifically, to determine whether Doe retaliated against Winegar-Schultz by filing a “sexual harassment and stalking complaint against her with EOAA.” The SSMS affirmed the EOAA determination, concluding that Doe’s complaint was made “in good faith, not out of retaliation.”

In 2020, Winegar-Schultz commenced this action against the university, alleging that it committed reprisal in violation of the MHRA. The complaint alleged that the

¹ The sexual-harassment complaints are not included in the record.

university committed reprisal against Winegar-Schultz as a result of the sexual-harassment complaint that Doe filed against her.

The district court granted the university's motion for summary judgment, concluding that Winegar-Schultz's MHRA reprisal claim failed because there existed no facts to demonstrate that the university took an adverse employment action against Winegar-Schultz.

Winegar-Schultz appeals.

DECISION

On appeal from a grant of summary judgment, this court reviews *de novo* whether there are any genuine issues of material fact for trial and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). In so doing, we view the evidence in the light most favorable to the party against whom summary judgment was granted and do not weigh facts or make credibility determinations. *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020). The construction of an MHRA provision is a question of law that is reviewed *de novo*. *Id.*

A claim for reprisal pursuant to the MHRA is as follows:

It is an unfair discriminatory practice for any . . . employer . . . to intentionally engage in any reprisal against any person because that person . . . opposed a practice forbidden under this chapter . . .

....

A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment. It is a reprisal for an employer to do any of the following with respect to an individual because that individual [opposed an unfair discriminatory practice]: refuse to hire the individual; depart from any customary employment practice; transfer or assign

the individual to a lesser position in terms of wages, hours, job classification, job security, or other employment status; or inform another employer that the individual has engaged in the activities listed in [this section].

Minn. Stat. § 363A.15²

“A reprisal claim is analyzed under the *McDonnell Douglas* burden-shifting test.” *Hoover v. Norwest Priv. Mortg. Banking*, 632 N.W.2d 534, 548 (Minn. 2001); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (establishing a three-part burden-shifting test for employment discrimination). To establish a *prima facie* case that an employer violated section 363A.15 because it intentionally engaged in a reprisal against a plaintiff for having opposed a practice forbidden under the MHRA, “a plaintiff . . . must establish the following elements: ‘(1) statutorily-protected conduct by the employee; (2) adverse employment action by the employer; and (3) a causal connection between the two.’” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 81 (Minn. 2010) (quoting *Hoover*, 632 N.W.2d at 548).

The district court, in granting summary judgment to the university, determined Winegar-Schultz failed to establish the second *Bahr* element because there are no facts that demonstrate the university took an adverse action against Winegar-Schultz. The district court reasoned that, although Winegar-Schultz “argues that John Doe took ‘adverse action’ against her, and the University failed to appropriately respond” to Doe’s actions, this is

² Section 363A.15 was amended in 2023 in a manner not relevant to this case. *See* 2023 Minn. Laws ch. 52, art. 19, § 68.

inadequate to survive summary judgment because “an ‘adverse employment action’ is one taken by an employer.”

Winegar-Schultz claims that the existence of an adverse action by the university is established by the fact that the university “knew or should have known” that Doe filed a false sexual-harassment complaint against her in retaliation for her complaint against him. We are not persuaded.

We first note that Winegar-Schultz has cited no authority which provides for vicarious liability to an employer for a purported reprisal by its employee in an MHRA action brought pursuant to section 363A.15. And, we have found no appellate decisions that have applied the MHRA in such manner in a reprisal context. Winegar-Schultz cites only to a case involving an MHRA claim for sex discrimination based on a hostile working environment due to sexual harassment. *See Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 567-71 (Minn. 2008) (determining an employer was vicariously liable for the hostile work environment created in connection with sexual harassment committed by its employee, pursuant to an agency standard). However, to the extent that an agency principle might be applicable to Winegar-Schultz’s reprisal claim, there exists no facts to indicate Doe occupied the position of her supervisor such that he would be an agent of the university.

Winegar-Schultz concedes that the university was obligated to fully investigate Doe’s sexual-harassment complaint. And, part of the investigation by the university involved Winegar-Schultz’s allegation that Doe filed it in retaliation of her complaint.

The record before the district court, and now before this court, includes: notes from EOAA investigators who met with each of the complainants approximately five times and who interviewed several witnesses and university personnel about Winegar-Schultz's and Doe's sexual-harassment complaints; copies of emails, social media posts, texts, and Facebook messages pertaining to the accusations; the investigatory reports compiled by the EOAA detailing the results and findings of their approximately four-month investigation of the complaints; the result of the appeal hearing before the SSMS affirming the EOAA determinations; as well as transcripts from depositions of Winegar-Schultz and five other university personnel.

Following its extensive investigation, the EOAA issued its report which indicated that “[Doe] reported that he has been the ‘subject of a very intense campaign of harassment’ by [Winegar-Schultz],” who he accused of engaging in sexually harassing behavior toward him that included: insulting him in public; berating him (by saying things like she hated him and that he had ruined her life); blaming him for unhappiness and health issues; propositioning him for sex; sending him unwanted gifts; complimenting him; threatening him; demanding personal information; making other unwanted contact (including consistent requests for him to spend time with her); posting hurtful information about him on her social media accounts; and sending an unsolicited email in January 2018 to a person with whom Doe was romantically involved, making accusations of “patterns of predatory behavior” including “emotional abuse and sexual assault.”

The EOAA ultimately determined that the reported incidents which Doe complained of were not actions so “severe and pervasive as to unreasonably interfere with [Doe's] work

or academic performance or create a hostile environment as is necessary for a policy violation,” and therefore Winegar-Schultz’s behavior was not “sexual harassment” under university policy. The EOAA further determined that Doe filed his sexual-harassment complaint against Winegar-Schultz in good faith and it was not retaliation against Winegar-Schultz.

Thus, the record reflects that, although the EOAA ultimately dismissed Doe’s complaint against Winegar-Schultz (and it reached the same conclusion involving Winegar-Schultz’s complaint against Doe), Doe filed it in good faith, and it was not retaliatory. No genuine issues of material fact contrary to this determination exist in this record.

Winegar-Schultz’s arguments to the contrary are unpersuasive. Attempting to identify genuine issues of material fact, Winegar-Schultz cites to the email notification she received from the EOAA on February 20, 2018, which states: “We recently received a report from [Doe] that you engaged in stalking and/or sexual harassment in January 2018, after he requested that you no longer contact him.”

Winegar-Schultz insists that this single email suggests that the “material facts of [Doe’s] complaint were false,” because Doe later told an EOAA investigator that “I never said do not contact me.”

As we have already summarized above, the EOAA investigation of Doe’s sexual-harassment complaint was very thorough. Further, the EOAA investigators were aware of this factual discrepancy raised by Winegar-Schultz. And, a factual discrepancy as to exactly when, or whether, Doe informed Winegar-Schultz to cease contact is not

material to Winegar-Schultz's claim of retaliation based upon Doe's sexual-harassment complaint which, the record indicates, was filed in good faith and not in retaliation.

Our review of this record compels our agreement with the district court that Doe filed a sexual-harassment complaint with the EOAA in good faith, not as retaliation for Winegar-Schultz's sexual-harassment complaint against him. And, because the sole basis upon which Winegar-Schultz alleges that the university committed adverse action against her is premised upon a retaliatory complaint filed by Doe, the district court correctly granted respondent's motion for summary-judgment dismissal of Winegar-Schultz's MHRA reprisal claim.

Affirmed.