

*This opinion is nonprecedential except as provided by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
A23-1360**

Dian Mullis,
Appellant,

vs.

Professional Plating, Inc.,
Respondent.

**Filed April 1, 2024
Affirmed
Cleary, Judge***

Anoka County District Court
File No. 02-CV-21-5439

Christopher J. Moreland, Ross D. Stadheim, MJSB Employment Justice LLP, Minneapolis,
Minnesota (for appellant)

Nicholas L. Klehr, Hugh E. Mulligan, Klehr & Mulligan, PLLC, Edina, Minnesota (for
respondent)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Cleary,
Judge.

NONPRECEDENTIAL OPINION

CLEARY, Judge

Appellant challenges the summary-judgment dismissal of her reprisal claim under
the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.50 (Minn. 2022 &

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

Supp. 2023), against her former employer. Because we conclude there are no genuine disputes of material fact regarding whether appellant engaged in statutorily protected conduct, we affirm.

FACTS

Appellant Dian Mullis began working as the Director of Engineering at respondent Professional Plating, Inc. in February 2020.¹ On January 14, 2021, Craig Ingalls, Professional Plating’s president, gave a tour to a prospective employee. During the tour, Ingalls introduced the prospective employee to two Professional Plating engineers, Mercedes Anderson and Israel Hassan. He introduced Anderson by her name, but he introduced Hassan as the company’s “Black, Jewish, Muslim” engineer.² Hassan is neither Jewish nor Muslim.

Mullis, whose office was nearby, overheard the introduction of Hassan. Afterward, she apologized to Hassan for Ingalls’s introduction, and he thanked Mullis and said that the introduction made him “uncomfortable.” A few days later, on January 18, 2021, Mullis confronted Ingalls about his introduction of Hassan. Besides this incident, Mullis was unaware of other instances of racially or religiously discriminatory statements or conduct by Professional Plating employees.

¹ Consistent with the standard of review, we present the facts in the light most favorable to Mullis as the nonmoving party. *See Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020).

² The district court noted that the record suggests that Hassan had “a different account of this event, which he recalled as ‘[Ingalls] introduced me as Israel Todd Hassan and he said that I have Judaism going with my first name, then I have a Muslim last name and a Western middle name.’” The district court determined “the difference in detail regarding the exact wording is not a material fact in this litigation.”

On February 1, 2021, Professional Plating fired Mullis. Ingalls made the final decision, which he informed Mullis was because of “core values.”

Mullis brought a reprisal claim against Professional Plating under the MHRA, alleging that Professional Plating fired her for opposing Ingalls’s discriminatory treatment of Hassan. Professional Plating moved for summary judgment, which Mullis opposed. The district court granted Professional Plating’s motion, determining that Mullis identified no “adverse employment consequences” suffered by Hassan and therefore Mullis could not reasonably believe that Professional Plating engaged in conduct forbidden by the MHRA. As a result, the district court concluded that Mullis did not engage in statutorily protected conduct required to sustain a MHRA reprisal claim.

Mullis appeals.

DECISION

Mullis argues that the district court erred by granting Professional Plating’s motion for summary judgment and dismissing her MHRA reprisal claim.³ Appellate courts review the grant of summary judgment de novo, examining “whether there are any genuine issues of material fact and whether the district court properly applied the law.” *Henry v. Indep.*

³ Mullis also argues that the district court erred by hearing Professional Plating’s summary-judgment motion because it was heard on May 26, after the May 8 scheduling order deadline. Under Minn. R. Civ. P. 16.02, “[a] schedule shall not be modified except by leave of court upon a showing of good cause.” But “whether or not to enforce its own scheduling order is clearly within the district court’s discretion.” *Maudsley v. Pederson*, 676 N.W.2d 8, 11-12 (Minn. App. 2004). Mullis did not identify any prejudice when requesting that the district court decline to hear Professional Plating’s summary-judgment motion, nor does she identify any prejudice in opposing that motion on appeal. As a result, we discern no abuse of discretion in the district court’s decision to hear the summary-judgment motion on the merits.

Sch. Dist. No. 625, 988 N.W.2d 868, 880 (Minn. 2023). We view the evidence in the light most favorable to Mullis, the nonmoving party, and resolve all doubts and factual inferences against Professional Plating, the moving party. *See Kenneh*, 944 N.W.2d at 228.

An actionable reprisal claim exists if an employer retaliates against an employee because the employee engaged in statutorily protected conduct by “oppos[ing] a practice forbidden” by the MHRA. Minn. Stat. § 363A.15(1); *Bahr v. Capella Univ.*, 788 N.W.2d 76, 81 (Minn. 2010). Mullis alleges that she was fired for confronting Ingalls about his introduction of Hassan, which she argues she reasonably believed to be racial and religious discrimination forbidden by the MHRA. The sole issue before us is whether Mullis’s confrontation qualifies as statutorily protected conduct.

The Minnesota Supreme Court has not yet decided whether a plaintiff must “plead opposition to a practice that is actually forbidden under the MHRA” or merely “a good-faith, reasonable belief that the opposed practice was forbidden under the MHRA” to sustain a MHRA reprisal claim. *See Bahr*, 788 N.W.2d at 82. Because we conclude that Mullis did not engage in statutorily protected conduct even under the good-faith, reasonable-belief standard, we need not address Mullis’s argument that the district court improperly applied an actual-violation standard.

Under a good-faith, reasonable-belief standard, a plaintiff must show that they acted in subjective good faith and that it was “objectively reasonable” to believe the opposed conduct violated the MHRA. *Id.* There is no dispute that Mullis acted in good faith. Instead, the parties dispute whether it was objectively reasonable for Mullis to believe that what she was opposing was prohibited by the MHRA. For this objective component, “the

reasonableness of a party's belief must be connected to the substantive law" governing unfair employment practices. *Id.* at 83. "If a practice is not unlawful under the plain terms of the MHRA, a party's belief that the practice is unlawful cannot be reasonable." *Id.* at 84.

As relevant to Mullis's allegation that she engaged in statutorily protected conduct, the MHRA forbids an employer from "discriminat[ing] against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities or privileges of employment." Minn. Stat. § 363A.08, subd. 2(3). Under Minnesota caselaw, an employer engages in unlawful discrimination within the meaning of section 363A.08, subdivision 2(3), by subjecting an employee to an "adverse employment action" because of race or religion.⁴ *Id.* at 83. To prove an adverse employment action, the Minnesota Supreme Court has generally "required plaintiffs to demonstrate some tangible change in duties or working conditions that leads to some material employment disadvantage." *Henry*, 988 N.W.2d at 884 (quotation omitted). For example, "termination, cuts in pay or benefits, and changes that affect an employee's future career prospects are significant enough to meet the standard, as are circumstances amounting to a constructive discharge." *Id.* (quotation omitted). But "minor changes in working conditions are insufficient." *Bahr*, 788 N.W.2d at 83.

⁴ The Minnesota Supreme Court recently clarified that there are two theories for relief under section 363A.08, subdivision 2(3): disparate-treatment claims, "based on *differential treatment* due to a plaintiff's protected status" and hostile-work-environment claims "based on *harassing conduct* due to a plaintiff's protected status." *Henry*, 988 N.W.2d at 885. Mullis's reprisal claim is premised upon the first theory—that Ingalls subjected Hassan to differential treatment based on his protected status.

Mullis argues that she could reasonably believe that Hassan was subjected to unlawful employment discrimination because of Ingalls's introduction of Hassan. But Mullis does not identify any changes to Hassan's duties or working conditions at Professional Plating or disadvantages in his position or career. *See Henry*, 988 N.W.2d at 884. The evidence related to Hassan's employment shows that he worked for Professional Plating since June 2014 and received multiple promotions, with pay raises, during that time. The record does not include evidence that Hassan received negative performance reviews, written discipline, or other adverse consequences to his employment. In short, there is nothing to suggest a change to Hassan's "hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment," tangible or otherwise. *See Bahr*, 788 N.W.2d at 84 (quoting Minn. Stat. § 363A.08, subd. 2(3)).⁵

Mullis relies on the Minnesota Supreme Court's decision in *Lamb v. Village of Bagley* to argue that "race-based comments" may constitute an adverse employment action, and it was therefore reasonable to believe that introducing Hassan as the "Black, Jewish, Muslim" engineer was forbidden by the MHRA. 310 N.W.2d 508, 509 (Minn. 1981). *Lamb* involved an employment-discrimination claim brought by a Native American police officer based on extensive verbal abuse by the police chief, including racial slurs and other

⁵ Mullis also asserts that the district court erred by analyzing her reprisal claim differently because she opposed allegedly discriminatory conduct directed at Hassan rather than conduct directed at herself. We agree that neither the MHRA reprisal provision nor Minnesota precedent suggest that a reprisal claim requires different proof depending on the target of the underlying discriminatory conduct. But because the district court properly analyzed whether the record supports a reasonable belief that Hassan suffered an adverse employment action, we discern no error in the district court's conclusion that Mullis did not engage in statutorily protected conduct.

derogatory remarks; lower pay than white officers; and withholding of a clothing allowance. *Id.* at 509-10, 512. But *Lamb* did not hold that “race-based comments” are adverse employment actions. Rather, the supreme court noted “[t]he racially derogatory remarks directed at [the plaintiff] establish a prima facie case of unequal treatment” and concluded “the racial epithets, admittedly made, *coupled with the admittedly disparate treatment*, establish impermissible discrimination as a matter of law.” *Id.* at 511 (emphasis added). *Lamb* does not suggest that Ingalls’s introduction of Hassan, absent any other consequences to Hassan’s employment, could reasonably be believed to constitute a practice forbidden by the MHRA.

In sum, even when viewing the record in the light most favorable to Mullis as the nonmoving party, the undisputed evidence establishes that Hassan did not experience any alterations or disadvantages in the terms or conditions of his employment. As a result, Mullis could not have an objectively reasonable belief that Professional Plating’s treatment of Hassan was forbidden by the MHRA. *See Bahr*, 788 N.W.2d at 84. The district court did not err by concluding that there are no disputed facts regarding whether Mullis engaged in statutorily protected conduct under the MHRA and dismissing Mullis’s reprisal claim.

Affirmed.