

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

NAOMI WASHINGTON,	:	APPEAL NO. C-130233
	:	TRIAL NO. A-1100590
Plaintiff-Appellant,	:	
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
EXECUTIVE MANAGEMENT	:	
SERVICES, INC.,	:	
	:	
GUY WALKER,	:	
	:	
and	:	
	:	
RICK GOUVAN,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Naomi Washington appeals the Hamilton County Common Pleas Court’s entry of summary judgment for defendants-appellees Executive Management Services, Inc., (“EMS”), Guy Walker, and Rick Gouvan (collectively referred to as “Defendants”), on her claims alleging age, sex, and retaliatory employment discrimination in violation of R.C. 4112.02(A) and 4112.02(I). Washington challenges the grant of summary judgment in two assignments of error.

We review the grant of summary judgment de novo, applying the standards set forth in Civ.R. 56. *Doe v. Shaffer*, 90 Ohio St.3d 388, 390, 738 N.E.2d 1243 (2000).

Washington, a woman over the age of 40, alleged that EMS, her former employer, Walker, her former supervisor, and Gouvan, her former branch manager at EMS, discriminated against her when she was terminated from her position providing janitorial services at the Cincinnati State Technical College. Washington also alleged that her termination was in retaliation for reporting to Walker and to the police verbal threats made to her by Devan Schueler, a former EMS employee.

The Defendants moved for summary judgment on the ground that her termination was the result of excessive absences and lateness, and not because of any discriminatory animus or in retaliation for reporting Schueler's conduct. In support, they presented evidence that Chris Stolte, EMS's Human Resources Manager, made the termination decision based on information from Christy McAfee, the officer manager, and that Walker was not involved in the decision to terminate her. The trial court granted the motions for summary judgment.

We first review whether the trial court erred by granting summary judgment on the age- and sex-based claims. A plaintiff may establish a prima facie case of discrimination in violation of R.C. 4112.02(A) by two methods: (1) directly, by presenting evidence, of any nature, to show that an employer was motivated by discriminatory intent, or (2) indirectly, by presenting evidence that satisfies the four-part analysis set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), as adopted and modified by Ohio courts. *Mauzy v. Kelly Servs.*, 75 Ohio St.3d 578, 664 N.E.2d 1272 (1996); *Coryell v. Bank One Trust Co. N.A.*, 101 Ohio St.3d 175, 2004-Ohio-723, 803 N.E.2d 781.

On appeal, Washington challenges only the trial court's determination that she failed to present sufficient evidence to directly establish that her termination was on account of her age or sex. According to Washington, the Defendants' discriminatory intent was demonstrated by Walker's reference to her as a "crazy old woman" in a

statement to the police officer investigating Washington's complaint against Schueler, and by his reference to Washington and two other female employees over the age of 40 as "old women" on multiple occasions in her presence.

Generally, discriminatory comments or remarks made by an employer may establish a claim for disparate treatment on the basis of age or sex if the employee can demonstrate a nexus between the comments and her subsequent discharge. *See Kohmescher v. Kroger Co.*, 61 Ohio St.3d 501, 504, 575 N.E.2d 439 (1991) (holding that supervisor's written recommendation in response to employer's requested implementation of its reduction in force that the plaintiff be dismissed because he was "eligible for (the) retirement window" constituted sufficient evidence of age discrimination to avoid summary judgment), *modified in part on other grounds, Coryell* at paragraph one of the syllabus.

In this case, EMS presented evidence that Walker was not involved in the decision to terminate her. Washington failed to refute this evidence, and she failed to present evidence of discriminatory intent by those who were involved in the decision to terminate her. Absent evidence of the requisite nexus, she failed to demonstrate that a genuine issue of material fact existed as to the likelihood that her termination was motivated by a discriminatory intent. Therefore, we hold that the trial court properly entered summary judgment in favor of the Defendants on the age- and sex-based claims. *See Civ.R. 56(C)*.

Washington also challenges the trial court's grant of summary judgment for the Defendants on her retaliation claim. R.C. 4112.02(I) makes it an unlawful employment practice "to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any

investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.”

Before granting summary judgment on this claim, the trial court found that Washington had failed to show that she had participated in a protected activity under the anti-retaliation statute and that she had failed to show a causal nexus between her alleged protected activity and her termination.

Washington argues that her reporting of physical threats made against her by a coworker satisfied the “protected activity” element of her retaliation claim. But her complaints about Schueler, while reprehensible if true, were not complaints about any discrimination as contemplated by R.C. 4112.02(I).

Because Washington failed to show that she had participated in a protected activity under the anti-retaliation statute, she failed to demonstrate that a genuine issue of material fact existed as to the likelihood that her termination was motivated by a retaliatory intent. Therefore, we hold that the trial court properly entered summary judgment in favor of the Defendants on Washington’s claim for retaliatory discharge under R.C 4112.02(I). *See* Civ.R. 56(C).

Accordingly, we overrule the assignments of errors, and affirm the trial court’s judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on February 14, 2014

per order of the court _____.
Presiding Judge