UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2171

September Term, 2014

DARLENE WHITE

v.

LAUREN M. PARKER, ET AL.

Woodward,
Reed,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: February 24, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Darlene White, the former Chief Deputy Register of Wills for Anne Arundel County, filed an action in the Circuit Court for Anne Arundel County against, among others, appellees, the State of Maryland and Lauren M. Parker, the Register of Wills for Anne Arundel County, claiming discriminatory retaliation. Appellees filed a motion for summary judgment, which the court granted.

On appeal, appellant presents two questions for our review, which we have condensed into one:[1]

> Did the circuit court err in granting summary judgment in favor of appellees?

We answer this question in the negative and, accordingly, affirm the judgment of the circuit court.

BACKGROUND

In November 2006, Parker was elected Register of Wills for Anne Arundel County for the first time. On September 26, 2007, Parker promoted appellant from an auditor to Assistant Chief Deputy of the Register of Wills for Anne Arundel County. On November

[1] Appellant's questions, as presented in her brief, are as follows:

1. Did the trial court err when it granted summary judgment on Plaintiff-Appellant's claim of retaliatory termination when the evidentiary record demonstrates that Plaintiff was immediately terminated after filing several complaints of discrimination, when Defendant-Appellee was aware of the filing of Plaintiff's complaints, and when Defendant testified that the filing of the complaints influenced the decision to terminate Plaintiff?

2. Did the trial court err when it granted summary judgment where there were many significant, material facts in dispute?

13, 2007, Parker promoted appellant from Assistant Chief Deputy to Chief Deputy.

In late June 2011, Parker discovered that appellant had approved a pay raise for an employee without Parker's permission. On July 5, 2011, Parker learned that, over the previous weekend, appellant had transferred her supervisor folder from the office's server to her desktop without Parker's knowledge or permission.

On July 6, 2011, Parker met with appellant, told her "that it's not working with [appellant] because of [appellant's] dominating personality and [that appellant] was not capable of changing [her] ways of managing and leading th[e] office[,]" and suggested that appellant retire. After appellant declined to retire, Parker decided that they would "start over" – appellant would keep her salary and public title, but internally, she would be demoted to Chief Administrative Officer and her personnel responsibilities would be transferred to other employees.

On July 18, 2011, Parker wrote appellant two memos regarding appellant's approval of an employee's pay raise and appellant's transfer of the supervisor folder from the server to her desktop, respectively. In these memos, Parker stated that appellant's actions "created severe problems in this office" and "a loss of trust by the Register[.]"

In November 2011, appellant went on full-time leave pursuant to the Family and Medical Leave Act ("FMLA"). Appellant returned to work on a part-time basis in December 2011.

On December 12, 2011, appellant filed a Whistleblower Complaint against Parker with the Department of Budget and Management. The complaint contained various grievances about alleged "unethical and illegal activities in the Register's [O]ffice,

including a hostile work environment, mismanagement of budget and public records, abuse of political influence[,] and unlawful hiring practices." The Department referred the matter to Steven Barzal, Director of the Office of Human Resources for the Office of the Comptroller of Maryland, for investigation. Barzal determined that there was "no cause regarding the issues raised by [appellant] in her complaint." Barzal's report concluded:

> Moreover, there has been no protected adverse employment action that has occurred to this date. **Not only does [appellant's] filing of this complaint appear to be pre-emptive to preclude retaliation** (in the form of termination), **but in effect, could likely become a self-fulfilling prophecy** where she complains of a predicted outcome (termination), and then complains that an adverse action has occurred.

(Second bold emphasis added).

In late December 2011, appellant contacted the NAACP which, on December 28, 2011, sent a letter to the Governor and copied eight government officials, including Parker and appellant. The letter notified the recipients of appellant's Whistleblower Complaint and stated that "[w]e respectfully, request that your office take the necessary steps to insure that [appellant] is not retaliated against for bringing this matter to the attention of the appropriate authorities." On January 3, 2012, appellant filed a complaint with the Maryland Commission on Civil Rights ("civil rights complaint"), which was also forwarded to the Office of the Comptroller.

On January 5 or 6, 2012, appellant conducted a training program for employees of the Register's Office. After the training, at least four employees complained to Parker about the content of the training and appellant's attitude toward employees.

On January 9, 2012, Parker placed appellant on paid administrative leave. On January 30, 2012, Parker terminated appellant's employment due to appellant's "management style and the relationship between [ ] Parker and [appellant.]"

On January 31, 2014, appellant filed the instant action against the Comptroller of Maryland, Parker, the State of Maryland, and Anne Arundel County in the circuit court, alleging counts of wrongful termination, violation of due process, discrimination based on race, gender, age, and retaliation, and requesting a declaratory judgment, a writ of mandamus, and a writ quo warranto. On July 25, 2014, the circuit court dismissed all defendants, except appellees, Parker and the State of Maryland, and all counts except for discriminatory retaliation.

On October 28, 2014, appellees filed a motion for summary judgment. On November 11, 2014, appellant filed an opposition to appellees' motion. On November 13, 2014, the circuit court held a hearing on appellees' motion for summary judgment and other matters unrelated to this appeal. On December 3, 2014, both parties filed supplemental memoranda regarding the Supreme Court's decision in *University of Texas Southwestern Medical Center v. Nassar*, 133 S. Ct. 2517 (2013).

On December 5, 2014, the circuit court issued a memorandum opinion and order in which it granted appellees' motion for summary judgment. The opinion and order were entered on December 8, 2014. Appellant timely filed her notice of appeal on December 22, 2014.

Additional facts will be set forth as necessary to resolve the issue raised in the instant appeal.

STANDARD OF REVIEW

The trial court may grant a motion for summary judgment if (1) no dispute as to a material fact exists, and (2) the party seeking summary judgment is entitled to judgment as a matter of law. *Tyler v. City of College Park*, 415 Md. 475, 498 (2010). "The facts properly before the court, and any reasonable inferences that may be drawn from them will be construed in the light most favorable to the non-moving party." *De la Puente v. Cty. Comm'rs of Frederick Cty.*, 386 Md. 505, 510 (2005) (internal quotation marks omitted). We perform an independent review of the record to determine whether there is a dispute of material fact. *Tyler*, 415 Md. at 498-99. "Even when there are factual disputes, when resolution of these disputes makes no difference in the determination of the legal question . . . [the disputed facts] do not prevent the grant of summary judgment." *Honeycutt v. Honeycutt*, 150 Md. App. 604, 620 (alterations in original) (internal quotation marks omitted), *cert. denied*, 376 Md. 544 (2003). Whether a trial court's grant of summary judgment was proper under Maryland Rule 2-501 is a question of law subject to *de novo* review. *Walk v. Hartford Cas. Ins. Co.*, 382 Md. 1, 14 (2004).

DISCUSSION

Retaliation under the Maryland Fair Employment Practices Act

The Maryland Fair Employment Practices Act ("FEPA"), Md. Code (1984, 2009 Repl. Vol.), § 20-601 *et seq.*, of the State Government (II) Article ("SG"), prohibits an employer from retaliating against an employee for filing a charge of discrimination: "An employer may not discriminate or retaliate against any of its employees . . . because the

individual has . . . made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subtitle." SG § 20-606(f).

Title VII of the Civil Rights Act of 1964 contains a similar retaliation provision: "It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." 42 U.S.C. § 2000e-3(a) (2012).

Maryland courts rely on federal court decisions interpreting Title VII's retaliation provision in their analysis of FEPA's retaliation provision. The Court of Appeals has stated:

> Section 2000e-3(a) of the Civil Rights Act, like [FEPA's retaliation provision], makes it unlawful for an employer to discriminate against any employee either "because he has opposed any practice made an unlawful employment practice" under Title VII (the opposition clause), or "because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" under Title VII (the participation clause). **In the absence of legislative intent to the contrary, we read [FEPA's retaliation provision] in harmony with § 2000e-3(a) of the federal statute, and therefore construe the two provisions to fulfill the same objectives. In this regard, we may look to court decisions interpreting § 2000e-3(a).**
>
> The opposition and participation clauses of § 2000e-3(a) have been liberally applied by the courts to shield employees who speak out against an employer's unlawful employment practices, the obvious rationale being that without some guaranteed protection to assert equal employment rights, the ultimate purpose of the act would be severely limited. …
>
> We need not decide whether [the plaintiff's] complaint, as now framed, would present a cognizable claim under the federal or state anti-discrimination statutes. **We note, however, that under the**

> **authorities, to prove a prima facie retaliation case under § 2000e-3(a) requires a showing (1) that there was a statutorily protected "opposition" or "participation"; (2) that an adverse employment action occurred; and (3) that there was a causal link between the protected activity and the adverse employment action. As the Maryland statute tracks the language of § 2000e-3(a), we think it likely that these same criteria would determine whether a prima facie violation of the state law was established.** In any event, it is clear that [the plaintiff] can pursue a remedy under both the state and federal anti-discrimination statutes for his discharge from employment for apprising his employer of allegedly discriminatory employment practices.

Chappell v. S. Md. Hosp., Inc., 320 Md. 483, 494-96 (1990) (emphasis added) (citations and footnote omitted).

More recently, in *Taylor v. Giant of Maryland, LLC*, the Court of Appeals analyzed an issue of first impression under FEPA—the standards for appropriate comparator evidence to prove disparate treatment—by consulting federal court decisions that dealt with the analogous issue under Title VII:

> **In addressing the issue of appropriate comparator evidence, we recognize** the dearth of our own jurisprudence on this issue, as well as **our history of consulting federal precedent in the equal employment area.** *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 481, 481 n.8, 914 A.2d 735 (2007) ("Title VII is the federal analog to [FEPA]" and "our courts traditionally seek guidance from federal cases in interpreting [FEPA]"). Federal courts have permitted plaintiffs to prove discrimination with circumstantial evidence by demonstrating that "similarly situated individuals outside the[ir] protected class were treated more favorably." *Benuzzi v. Bd. of Educ.*, 647 F.3d 652, 662 (7th Cir. 2011). Under some circumstances, circumstantial evidence has been deemed "more certain, satisfying and persuasive than direct evidence." *Merritt v. Old Dominion Freight Line, Inc.*, 601 F.3d 289, 299-300 (4th Cir. 2010), quoting *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 100, 123 S. Ct. 2148, 156 L. Ed. 2d 84 (2003).

423 Md. 628, 652 (2011) (emphasis added).[2]

In *McDonnell Douglas Corp. v. Green*, the Supreme Court established the applicable rules for the parties' respective burdens in a Title VII retaliation case,

> The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case . . . .
>
> The burden then must shift to the employer to articulate some legitimate, nondiscriminatory reason for the [adverse employment action]. …
>
> ***
>
> [Then, the employee must] be afforded a fair opportunity to show that [the employer's] stated reason for [the adverse employment action] was in fact pretext.

411 U.S. 792, 802, 804 (1973).

This Court adopted the *McDonnell Douglas* burden-shifting standard, also known as the "indirect method[,]" for FEPA retaliation claims in *Killian v. Kinzer*, 123 Md. App. 60, 68 (1998). *See Giant*, 423 Md. at 660; *see also Edgewood Mgmt. Corp. v. Jackson*, 212 Md. App. 177, 199-200, *cert. denied*, 434 Md. 313 (2013). Thus, to establish a retaliation claim under FEPA, the employee must satisfy step one by producing evidence that (a) the employee "engaged in a protected activity;" (b) the "employer took an adverse action against [the employee]"; and (c) the "adverse action was causally connected to [the employee's] protected activity." *Edgewood*, 212 Md. App. at 199. If the employee

[2] Of course, Maryland courts are not obligated to follow federal precedent in FEPA cases. *See, e.g.*, *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 482, 484-86, 494 (2007) (rejecting the Supreme Court's rule that a Title VII discriminatory discharge action accrues upon the date of the notice of discharge, and holding that, under FEPA, the action accrues upon the date of the actual discharge).

accomplishes step one, "the burden of production then shifts to [the employer,]" under step two, to show "a non-retaliatory reason for the adverse employment action." *Id.* at 199-200. If the employer satisfies step two, "the burden of production shifts back to [the employee,]" under step three, to demonstrate that the employer's proffered reasons are pretextual. *Id.* at 200.

In 1989, the Supreme Court established the federal standard of causation for retaliation and other Title VII claims in *Price Waterhouse v. Hopkins*, a sex discrimination case. 490 U.S. 228 (1989), *superseded by statute as stated in Burrage v. United States*, 134 S. Ct. 881, 889 n.4 (2014). In *Price Waterhouse*, the plurality opinion rejected the idea that Title VII required the employee to establish that her gender was the but-for cause of the employer's adverse employment action and instead adopted the "motivating factor" test:

> But-for causation is a hypothetical construct. In determining whether a particular factor was a but-for cause of a given event, we begin by assuming that that factor was present at the time of the event, and then ask whether, even if that factor had been absent, the event nevertheless would have transpired in the same way. The present, active tense of the operative verbs of [Title VII] ("to fail or refuse"), in contrast, turns our attention to the actual moment of the event in question, the adverse employment decision. **The critical inquiry, the one commanded by the words of [Title VII], is whether gender was a factor in the employment decision *at the moment it was made*. Moreover, since we know that the words "because of" do not mean "*solely* because of," we also know that Title VII meant to condemn even those decisions based on a mixture of legitimate and illegitimate considerations. When, therefore, an employer considers both gender and legitimate factors at the time of making a decision, that decision was "because of" sex and the other, legitimate considerations . . . .**

490 U.S. at 240-41 (Brennan, J., plurality opinion) (bold emphasis added) (footnote omitted); *see also id.* at 258, 261 (concurring opinions).

In *Ruffin Hotel Corp. of Maryland, Inc. v. Gasper*, the Court of Appeals adopted the motivating factor test for FEPA retaliation claims: "We therefore affirm the holding of the Court of Special Appeals that [the employee] is entitled to a new trial at which [the employee] will be required to persuade the jury that her opposition to harassing conduct was a *motivating* factor in the decision to terminate her employment." 418 Md. 594, 614 (2011). The Court of Appeals quoted at length from this Court's opinion in *Ruffin Hotel*, which explained that Maryland had adopted the motivating factor test articulated in *Price Waterhouse*:

> **Discussions of the standard for proving employment discrimination under Title VII of the United States Code are instructive. In a plurality decision, in *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S. Ct. 1775, 104 L. Ed. 2d 268 (1989), Justice Brennan, writing for the plurality, stated that[:]**
>
> > **when a plaintiff . . . proves that her gender played a *motivating* part in an employment decision, the defendant may avoid a finding of liability only by proving by a preponderance of the evidence that it would have made the same decision even if it had not taken the plaintiff's gender into account.**
>
> *Id.* at 258 [109 S. Ct. 1775] (emphasis added).
>
> The "motivating factor" test was later ratified by a unanimous Supreme Court decision in *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 123 S. Ct. 2148, 156 L. Ed. 2d 84 (2003). In *Costa*, the Court concluded, "In order to obtain an instruction under [Title VII] *§ 2000e-2(m)*, a plaintiff need only present sufficient evidence for a reasonable jury to conclude, by a preponderance of the evidence, that 'race, color, religion, sex, or national origin was a *motivating factor*

for any employment practice.'" *Id.* at 101 [123 S. Ct. 2148] (emphasis added).

Ruffin argues that *Price Waterhouse* and *Costa* addressed only "mixed-motive" cases of discrimination, attempting to distinguish retaliation for protected conduct as a "single motive" claim. Ruffin's assertion that the proper standard is a "but for" test does not comport with Maryland law. Specifically, this Court has previously determined that the correct test for determining retaliatory discharge claims is whether the protected conduct was a "motivating factor" in the discharge. *See Magee v. DanSources Tech. Servs.*, 137 Md. App. 527, 565-66, 769 A.2d 231 (2001).

* * *

As we previously held in *Magee*, we find the following language from our opinion in *Brandon v. Molesworth*, 104 Md. App. 167, 655 A.2d 1292 (1995), *aff'd in part*, *rev'd in part*, 341 Md. 621, 672 A.2d 608 (1996), consistent with the plurality opinion in *Price Waterhouse*, and the Supreme Court's unanimous opinion in *Costa*:

> **Although the employee bears the burden of persuasion that discrimination was "a motivating factor," the employee need not prove that but for the discrimination she would not have been discharged.**

Brandon, supra, 104 Md. App. at 191 [655 A.2d 1292].

Gasper is correct that "determining factor" is not the same as "motivating factor." Motivate has been defined as to "provide a motive for doing something." THE NEW OXFORD DICTIONARY 1113 (2001). "Determine" has been defined as "be the decisive factor in" an action. *Id.* at 466. Without wading into deeper semantic waters, we agree that the use of "determining" in place of "motivating" is confusing, and does not reflect the correct standard of proof.

We believe Maryland law to be settled that a plaintiff's burden is to prove that the exercise of his or her protected activity was a "motivating" factor in the discharge, thereby creating burden-shifting to the defendant. An instruction that imposes upon a plaintiff the burden of proving that the exercise of

> his or her protected activity was the "determining" factor in the discharge from employment is a misstatement of the law, and erroneous.

Ruffin Hotel, 418 Md. at 609-12 (bold emphasis added) (quoting 183 Md. App. 211, 219-22 (2008)); *see also Giant*, 423 Md. at 658 (summarizing the *Ruffin Hotel* holding as a "clarifi[cation] that an employee must merely adduce evidence that their protected activity was a 'motivating factor' in an employer's decision to subject them to an adverse employment action, not necessarily the controlling factor").

In 2013, however, the Supreme Court revisited the standard of causation required for federal retaliation claims by announcing that its holding in *Price Waterhouse* was no longer controlling. *See Nassar*, 133 S. Ct. at 2526, 2534. In *Nassar*, the Supreme Court noted that Title VII prohibits two types of wrongful employer conduct: (1) "status-based discrimination" based on the employee's "race, color, religion, sex, or national origin," and (2) retaliation based on the employee's protected conduct. *Id.* at 2522. The Court made clear that, although the motivating factor test is still the appropriate standard of causation required for status-based discrimination claims, "retaliation claims must be proved according to traditional principles of but-for causation . . . . This requires proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer." *Id.* at 2522-23, 2533.

The Supreme Court based its holding—that an employee must establish but-for causation in a retaliation claim—in part on Congress's amendments to Title VII in 1991, as well as the Court's interpretation of the Age Discrimination in Employment Act ("ADEA") in a prior case, *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009):

> So, in short, the 1991 Act substituted a new burden-shifting framework for the one endorsed by *Price Waterhouse*. Under that new regime, a plaintiff could obtain declaratory relief, attorney's fees and costs, and some forms of injunctive relief based solely on proof that race, color, religion, sex, or nationality was a motivating factor in the employment action; but the employer's proof that it would still have taken the same employment action would save it from monetary damages and a reinstatement order.
>
> After *Price Waterhouse* and the 1991 Act, considerable time elapsed before the Court returned again to the meaning of "because" and the problem of causation. This time it arose in the context of a different, yet similar statute, the ADEA[.] Much like the Title VII statute in *Price Waterhouse*, the relevant portion of the ADEA provided that "'[i]t shall be 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.'"
>
> Concentrating first and foremost on the meaning of the phrase "'*because of* . . . age,'" the Court in *Gross* explained that the ordinary meaning of "'because of'" is "'by reason of'" or "'on account of.'" Thus, the "requirement that an employer took adverse action 'because of' age [meant] that age was the 'reason' that the employer decided to act," or, in other words, that "age was the 'but-for' cause of the employer's adverse decision."
>
> * * *
>
> In *Gross*, the Court was careful to restrict its analysis to the statute before it and withhold judgment on the proper resolution of a case, such as this, which arose under Title VII rather than the ADEA. But the particular confines of *Gross* do not deprive it of all persuasive force. Indeed, that opinion holds two insights for the present case. The first is textual and concerns the proper interpretation of the term "because" as it relates to the principles of causation underlying both § 623(a) and § 2000e-3(a). The second is the significance of Congress' structural choices in both Title VII itself and the law's 1991 amendments. These principles do not decide the present case but do inform its analysis, for the issues possess significant parallels.

Nassar, 133 S. Ct. at 2526-28 (emphasis added) (citations omitted).

The Court went on to analyze Title VII's retaliation provision:

> **This enactment**, like the statute at issue in *Gross*, **makes it unlawful for an employer to take adverse employment action against an employee "because" of certain criteria.** Given the lack of any meaningful textual difference between the text in this statute and the one in *Gross*, the proper conclusion here, as in *Gross*, is that **Title VII retaliation claims require proof that the desire to retaliate was the but-for cause of the challenged employment action.**

Id. at 2528 (emphasis added) (citations omitted). The Court noted that, "[w]hen Congress wrote the motivating[ ]factor provision in 1991, it chose to insert it as a subsection within § 2000e-2, which contains Title VII's ban on status-based discrimination, § 2000e-2(a) to (d), (l), and says nothing about retaliation." *Id.* at 2529. The Court continued: "If Congress had desired to make the motivating[ ]factor standard applicable to all Title VII claims, it could have . . . inserted the motivating[ ]factor provision as part of a section that applies to all such claims, such as § 2000e-5, which establishes the rules and remedies for all Title VII enforcement actions." *Id.*

The Supreme Court also noted the public policy justifications behind its holding:

> The proper interpretation and implementation of § 2000e-3(a) and its causation standard have central importance to the fair and responsible allocation of resources in the judicial and litigation systems. This is of particular significance because claims of retaliation are being made with ever-increasing frequency. …
>
> **In addition lessening the causation standard could also contribute to the filing of frivolous claims,** which would siphon resources from efforts by employer, administrative agencies, and courts to combat workplace harassment. **Consider in this regard the case of an employee who knows that he or she is about to be fired for poor performance, given a lower pay grade, or even just transferred to a different assignment or location. To forestall that lawful action, he or she might be tempted to make an**

> **unfounded charge of racial, sexual, or religious discrimination; then, when the unrelated employment action comes, the employee could allege that it is retaliation. If [the employee] were to prevail in his argument here, that claim could be established by a lessened causation standard, all in order to prevent the undesired change in employment circumstances. Even if the employer could escape judgment after trial, the lessened causation standard would make it far more difficult to dismiss dubious claims at the summary judgment stage.** It would be inconsistent with the structure and operation of Title VII to so raise the costs, both financial and reputational, on an employer whose actions were not in fact the result of any discriminatory or retaliatory intent. Yet there would be a significant risk of that consequence if [the employee's] position were adopted here.

Id. at 2531-32 (emphasis added) (citations omitted).

At oral argument before this Court, appellant argued that, if we are inclined to adopt the new federal standard of causation articulated in *Nassar*, we must consider that the Supreme Court recently took "a step back from *Nassar*" in *Burrage v. United States*, 134 S. Ct. 881, where "the Court recognized that there can be more than one but-for cause of the adverse employment action." We conclude that the language in *Burrage* upon which appellant relies did not actually change the *Nassar* rule of but-for causation. We shall explain.

Burrage was a criminal case where the defendant was convicted under a provision of the Controlled Substances Act that "imposes a 20-year mandatory minimum sentence on a defendant who unlawfully distributes [certain drugs and] 'death or serious bodily injury results from the use of such substance.'" 134 S. Ct. at 885. The first question presented to the Court was "[w]hether the defendant may be convicted under the 'death results' provision [ ] when the use of the controlled substance was a 'contributing cause'

of the death[.]" *Id.* at 886.

In its statutory interpretation of the "death results" provision, the Court gave the phrase "results from" its ordinary meaning, because the Controlled Substances Act does not define the phrase. *Id.* at 887. The Court noted:

> "Results from" imposes, in other words, a requirement of actual causality. "In the usual course," this requires proof "'that the harm would not have occurred' in the absence of—that is, but for—the defendant's conduct." *University of Tex. Southwestern Medical Center v. Nassar*, 570 U.S. ___, ___, 133 S. Ct. 2517, 2525, 186 L. Ed. 2d 503 (2013) (quoting Restatement of Torts § 431, Comment *a* (1934)).

Id. at 887-88.

The Court went on to discuss its ruling in *Nassar* as support for its contention that, "[w]here there is no textual or contextual indication to the contrary, courts regularly read phrases like 'results from' to require but-for causality." *Id.* at 888. The Court summarized its holding in *Nassar* as follows: "Given the ordinary meaning of the word 'because,' we held that § 2000e-3(a) 'require[s] proof that the desire to retaliate was [a] but-for cause of the challenged employment action.'" *Id.* at 888-89 (alterations in original). The Court concluded: "In sum, it is one of the traditional background principles 'against which Congress legislate[s],' that a phrase such as 'results from' imposes a requirement of but-for causation." *Id.* at 889 (alteration in original) (citation omitted).

The only other mention of *Nassar* in the Court's majority opinion, which appears to be the language upon with appellant relies in support of his contention that the Court weakened the *Nassar* standard of causation, is the following:

> The Government argues, however, that distinctive problems

> associated with drug overdoses counsel in favor of dispensing with the usual but-for causation requirement. Addicts often take drugs in combination, as [the deceased] did in this case, and according to the National Center for Injury Prevention and Control, at least 46 percent of overdose deaths in 2010 involved more than one drug. See Brief for United States 28-29. **This consideration leads the Government to urge an interpretation of "results from" under which use of a drug distributed by the defendant need not be a but-for cause of death, nor even independently sufficient to cause death, so long as it contributes to an aggregate force (such as mixed-drug intoxication) that is itself a but-for cause of death.**
>
> **In support of its argument, the Government can point to the undoubted reality that courts have not *always* required strict but-for causality, even where criminal liability is at issue. The most common (though still rare) instance of this occurs when multiple sufficient causes independently, but concurrently, produce a result. See *Nassar, supra*, at ___, 133 S. Ct., at 2525; see also LaFave 467 (describing these cases as "unusual" and "numerically in the minority").** To illustrate, if "A stabs B, inflicting a fatal wound; while at the same moment X, acting independently, shoots B in the head . . . also inflicting [a fatal] wound; and B dies from the combined effects of the two wounds," A will generally be liable for homicide even though his conduct was not a but-for cause of B's death (since B would have died from X's actions in any event). *Id.*, at 468 (italics omitted). **We need not accept or reject the special rule developed for these cases**, since there was no evidence here that [the deceased's] heroin use was an independently sufficient cause of his death. No expert was prepared to say that [the deceased] would have died from the heroin use alone.

Burrage, 134 S. Ct. at 889-90 (emphasis added). The above citation to *Nassar* in *Burrage* refers to the following passage in the *Nassar* opinion:

> **In the usual course, [the but-for] standard requires the plaintiff to show "that the harm would not have occurred" in the absence of—that is, but for—the defendant's conduct.** Restatement of Torts § 431, Comment *a* (negligence); § 432(1), and Comment *a* (same); see § 279, and Comment *c* (intentional infliction of bodily harm); § 280 (other intentional torts); Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 27, and Comment *b* (2010) (**noting the existence of an exception for cases**

> **where an injured party can prove the existence of multiple, independently sufficient factual causes, but observing that "cases invoking the concept are rare"**). See also Restatement (Second) of Torts § 432(1) (1963 and 1964) (negligence claims); § 870, Comment *l* (intentional injury to another); cf. § 435a, and Comment *a* (legal cause for intentional harm). It is thus textbook tort law that an action "is not regarded as a cause of an event if the particular event would have occurred without it." W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 265 (5th ed. 1984). This, then, is the background against which Congress legislated in enacting Title VII, and these are the default rules it is presumed to have incorporated, absent an indication to the contrary in the statute itself. See *Meyer v. Holley*, 537 U.S. 280, 285, 123 S. Ct. 824, 154 L. Ed. 2d 753 (2003); *Carey v. Piphus*, 435 U.S. 247, 257-258, 98 S. Ct. 1042, 55 L. Ed. 2d 252 (1978).

Nassar, 133 S. Ct. at 2525 (emphasis added).

In sum, in *Burrage*, the Court declined to adopt the Government's interpretation that the "death results" provision is satisfied "when multiple sufficient causes independently, but concurrently, produce a result." 134 S. Ct. at 890-91. Although the Court did cite to *Nassar* in acknowledging that the multiple sufficient causes rule has been recognized in the "rare" case, the Court in no way stated in *Burrage* that the but-for causation standard for federal retaliation claims established in *Nassar* had been replaced by the multiple sufficient causes standard. *Burrage*, 134 S. Ct. at 889-90. Justice Ginsburg, joined by Justice Sotomayor, made this point clear in her concurrence, which we quote in its entirety:

> **For reasons explained in my dissenting opinion in *University of Tex. Southwestern Medical Center v. Nassar*, 570 U.S. ___, ___, 133 S. Ct. 2517, 2534-2547, 186 L. Ed. 2d 503 (2013), I do not read "because of" in the context of antidiscrimination laws to mean "solely because of."** And I do not agree that words "appear[ing] in two or more legal rules, and so in connection with more than one purpose, ha[ve] and should have precisely the same scope in all of them." Cook, "Substance" and "Procedure" in the Conflict of Laws, 42 Yale L.J. 333, 337 (1933). But I do agree that

> "in the interpretation of a criminal statute subject to the rule of lenity," where there is room for debate, one should not choose the construction "that disfavors the defendant." *Ante*, at 891. Accordingly, I join the Court's judgment.

Burrage, 134 S. Ct. at 892 (Ginsburg, J., concurring) (alteration in original) (emphasis added) (citation omitted). Therefore, *Burrage* did not take a "step back from *Nassar*[,]" as appellant asserts.[3]

We see no reason why we would *not* adopt the but-for causation standard established in *Nassar* for FEPA retaliation claims. As the Court of Appeals stated in *Chappell*, "In the absence of legislative intent to the contrary, we read [FEPA's retaliation provision] in harmony with § 2000e-3(a) of the federal statute, and therefore construe the two provisions to fulfill the same objectives. In this regard, we may look to court decisions interpreting § 2000e-3(a)." 320 Md. at 494. Appellant cites no statutory language in FEPA or other policy considerations as a basis to reject the *Nassar* rule. Given that the Court of Appeals adopted the Supreme Court's motivating factor test as articulated in *Price Waterhouse*, and the Supreme Court has since held that such standard applies only to status-based discrimination claims, *not* retaliation claims, we will adopt the but-for causation standard

---

[3] Also at oral argument before this Court, appellant's counsel recited the following passage that he stated to be a quote from *Burrage v. United States*, 134 S. Ct. 881 (2014): "'A plaintiff,' and this is a quote from the case, 'at the summary judgment stage, [however,] is not required to conclusively establish the causal connection required to ultimately prevail, but rather faces a less onerous burden of making a *prima facie* case of causality.'" Such quote, however, is not from *Burrage*, but rather from *Ford v. Berry Plastics Corp.*, an unreported opinion from the U.S. District Court for the District of Maryland. *See* No. RDB-12-0877, 2013 WL 5442355 at *10 n.8 (D. Md. Sept. 27, 2013). Because unreported opinions cannot be relied upon, nor even cited, we will not consider this statement in our analysis. *See* Md. Rule 1-104.

established in *Nassar*.[4] *See Nassar*, 133 S. Ct. at 2526-28; *Price Waterhouse*, 490 U.S. at 240-41; *Ruffin Hotel*, 418 Md. at 609-12. Specifically, the *Nassar* but-for causation requirement is applicable to step one, because the third element in the *prima facie* case that appellant must show to satisfy step one is that "her employer's adverse action *was causally connected* to her protected activity." *Edgewood Mgmt. Corp. v. Jackson*, 212 Md. App. 177, 199 (emphasis added) (citations omitted), *cert. denied*, 434 Md. 313 (2013).

[4] All of the federal circuit courts of appeal that have published retaliation cases post-*Nassar*, with the exception of the Fourth Circuit, have applied the but-for causation requirement as part of the employee's burden to establish a *prima facie* case of retaliation under step one of the burden-shifting framework. *See Trask v. Secy'y, Dep't of Veterans Affairs*, 822 F.3d 1179, 1194 (11th Cir. 2016); *T.B. ex rel. Brenneise v. San Diego Unified Sch. Dist.*, 806 F.3d 451, 472-73 (9th Cir. 2015); *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 90-91 (2d Cir. 2015); *Zamora v. City of Hous.*, 798 F.3d 326, 331 (5th Cir. 2015), *cert. denied*, 136 S. Ct. 2009 (2016); *Yazdian v. ConMed Endoscopic Techs., Inc.*, 793 F.3d 634, 649 (6th Cir. 2015); *Musolf v. J.C. Penney Co., Inc.*, 773 F.3d 916, 919 (8th Cir. 2014); *Ward v. Jewell*, 772 F.3d 1199, 1203 (10th Cir. 2014); *Carlson v. CSX Transp., Inc.*, 758 F.3d 819, 828 n.1 (7th Cir. 2014); *Kaufman v. Perez*, 745 F.3d 521, 530-31 (D.C. Cir. 2014) (noting the standard in the concurring opinion); *Ponte v. Steelcase Inc.*, 741 F.3d 310, 313 (1st Cir. 2014). The Fourth Circuit, on the other hand, has held that *Nassar* does not necessarily apply or have a significant impact in burden-shifting cases. *See Foster v. Univ. of Md.-E. Shore*, 787 F.3d 243, 252 (4th Cir. 2015) (holding that, because the burden-shifting framework "has long demanded proof at the pretext stage that retaliation was a but-for cause of a challenged adverse employment action[,] *Nassar* does not alter the legal standard for adjudicating a *McDonnell Douglas* retaliation claim"); *see also Taylor v. Peninsula Reg'l Med. Ctr.*, 3 F. Supp. 3d 462, 472 (D. Md. 2014) ("The Court does not believe that *Nassar* significantly impacts the analysis where a plaintiff asserts a causal connection based on close temporal proximity between the protected conduct and the adverse employment action."), *aff'd*, 605 F. App'x 205 (4th Cir. 2015) (unpublished, per curiam opinion). We note, however, that in a recent opinion, the Fourth Circuit has cited to the *Nassar* but-for causation standard for retaliation claims under Title VII in its standard of review. *See Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d 208, 217-18 (2016) ("Retaliation claims . . . require the employee to show that retaliation was a but-for cause of a challenged adverse employment action." (internal quotation marks omitted)).

Applying the *Nassar* but-for causation requirement to the instant case, we conclude that appellant failed to adduce sufficient evidence of a *prima facie* case of retaliation under step one, because she never alleged that filing her Whistleblower Complaint and civil rights complaint were the but-for cause of her termination. Rather, appellant merely alleged that her complaints were a "motivating factor" for her termination. Accordingly, under *Nassar*, the trial court did not err in granting summary judgment in favor of appellees.

Step Three: Pretext

Even if we do not apply the *Nassar* standard, appellant's retaliation claim still fails under step three of the burden-shifting framework. We shall explain.

We will assume, *arguendo*, that appellant produced sufficient evidence of a *prima facie* case of retaliation, satisfying step one. *See, e.g.*, *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 218 (4th Cir. 2007) (assuming that the plaintiff made a *prima facie* case of discrimination), *cert. denied*, 552 U.S. 1102 (2008); *Hux v. City of Newport News*, 451 F.3d 311, 314 (4th Cir. 2006) (same); *Laber v. Harvey*, 438 F.3d 404, 432 (4th Cir. 2006) (en banc) (same). Furthermore, we conclude that appellees provided sufficient evidence of a legitimate reason for appellant's termination, satisfying step two. Appellant produced appellant's termination letter from Parker, which stated in relevant part: "After careful consideration, *based on my concerns with your management style and the relationship between myself as Register and you as Chief Deputy and our ability to continue that arrangement*, as well as taking into account your written response set forth above, I have decided to terminate your employment . . . ." (Emphasis added).

As a result, we turn to step three: whether appellant adduced sufficient evidence that appellees' proffered reasons for terminating appellant were pretextual.

> Pretext might be established by showing such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons.

Edgewood Mgmt. Corp., 212 Md. App. at 200 (internal quotation marks omitted).

The employee, however, may not "allege pretext based on [his] own view of the truth; in order to rebut [the employer's] non-discriminatory reason, [the employee's] task is to proffer evidence showing that [the employer's] stated reason was not the real reason for its actions." *Taylor v. Peninsula Reg'l Med. Ctr.*, 3 F. Supp. 3d 462, 474 (D. Md. 2014), *aff'd*, 605 F. App'x 205 (4th Cir. 2015) (unpublished, per curiam opinion). In other words, "[w]hether [the employer's] beliefs were right or wrong is immaterial; what is relevant . . . is that [the employer] relied on those beliefs as grounds for dismissing [the employees]." *Rogosin v. Mayor of Balt.*, 197 F. Supp. 2d 345, 353 (D. Md. 2002).

For example, in *Khoury v. Meserve*, the employer proffered the following reason for terminating the employee under step two: "[The employee] was terminated for making false statements, failing to follow supervisory instructions, and improperly accessing sensitive information." 268 F. Supp. 2d 600, 615 (D. Md. 2003), *aff'd*, 85 F. App'x 960 (4th Cir. 2004) (unpublished, per curiam opinion). In its analysis of whether the employee satisfied her burden under step three that the employer's proffered reasons were pretextual, the U.S. District Court of Maryland observed that the employee

> proffer[ed] no evidence to contradict the record's demonstration that [the employer's] non-discriminatory reasons for terminating [the employee] were legitimate. **[The employee's] only "evidence" that [the employer's] reason for terminating her was a pretext for intentional discrimination is her insistence that the reason [the employer] stated was wrong—i.e., that [the employee] did not make false statements, etc. There is no evidence, however, that [the employer's] reason was not the real reason, i.e., that the agency did not believe that [the employee] lied when it terminated her employment.** This court's task is not to sit, in this context, as a super personnel agency. **It is not enough for [the employee] to allege pretext based on her own view of the truth; in order to rebut [the employer's] non-discriminatory reason, [the employee's] task is to proffer evidence showing that [the employer's] stated reason was not the real reason for its actions. [The employee] has proffered no such evidence and [the employer's] motion for summary judgment will therefore be granted.**

Id. at 615 (emphasis added) (footnote omitted).

Furthermore, temporal proximity, on its own, is not sufficient to survive summary judgment. *Francis v. Booz, Allen & Hamilton, Inc.*, 452 F.3d 299, 309 (4th Cir. 2006). "Where timing is the only basis for a claim of retaliation, and gradual adverse job actions began well before the [employee] had ever engaged in any protected activity, an inference of retaliation does not arise." *Id.* (internal quotation marks omitted).

In their motion for summary judgment in the instant case, appellees set forth the following reasons for why Parker terminated appellant:

> Over time, beginning around 2011, it appeared that [appellant's] management style began to become unreasonably rigid, and the Register's employees began to approach her with complaints regarding [appellant's] management and disciplinary style with greater frequency and urgency.

***

[Appellant's] increasingly problematic behavior was exemplified by two events that took place in June and July of 2011[, the pay raise that appellant authorized for another employee without Parker's permission, and appellant's removal of confidential personnel information from the server to her desktop.]

***

On [July 6, 2011], [appellant] states that the Register met with her. She confirms that the Register told her that having her serve as the Chief Deputy was "not working . . . because of [appellant's] dominating personality" and because "[she] was not capable of changing [her] ways of managing and leading this office." [Appellant] also admits that during this conversation, the Register "expressed concerns or issues with her leadership style" and "work ethics" and told her that she has a "dominant personality[.]" As a professional courtesy, at the end of the meeting, the Register offered [appellant] the opportunity to retire in lieu of termination.

After meeting with the Register a second time on July 11, 2011, [appellant] refused to retire from her position. The Register therefore decided, given [appellant's] institutional knowledge, she would "start over" with [appellant] and allow her to remain employed in the office. However, given that the Register had lost trust in [appellant], and given the complaints she had received from employees in the office, she no longer wanted [appellant] to handle personnel matters.

***

In the months following these warnings, [appellant] continued to harass certain employees within the office. She also continued to be insubordinate.

***

When [appellant] returned [from her FMLA leave] in December, she was still responsible for the office's new training program. She conducted a class for employees on either January 5 or 6, 2012. Following that class, at least four employees came into the Register's office to complain regarding [appellant's] treatment towards them during the class. Specifically, they complained to the Register that [appellant] was "condescending and rude" during the training, that

> she "didn't teach [them] anything," and basically told them that they would never need to learn new skills because they had no chance of ever being promoted[.] The students were "angry and refus[ed] to ever go to class again." … Additionally, around January 6, 2012, the Register learned that [appellant] had picked up confidential personnel files from the Comptroller's office regarding [another employee], a duty beyond those prescribed to [appellant] given the Register's lack of trust in [appellant]. Although [appellant] had gone to retrieve [another employee's] personnel documents, she did not report to the Register that she had done so.
>
> Given these two incidents, which of both [sic] occurred on either Thursday or Friday, January 5 or 6, of 2012, the Register decided that week that the situation with [appellant] was no longer manageable and that she would terminate her employment.

(Emphasis added) (citations omitted).

Management Style & Loss of Trust

Appellant argues that Parker's concerns about appellant's "management style" and Parker's loss of trust in appellant are pretextual, because any such concerns are contradicted by the absence of disciplinary notices in appellant's personnel file. Appellant also claims that the events that occurred in July 2011 cannot be the basis for her termination, because they occurred six months prior to such termination, and Parker had decided that "she would attempt to 'start over' with [appellant] and allow her to remain employed[.]" Appellees respond that appellant has not set forth either direct or circumstantial evidence of retaliation. Appellees note that the record demonstrates that Parker's dissatisfaction with appellant's job performance and Parker's loss of trust in appellant occurred before appellant filed her Whistleblower Complaint or civil rights complaint.

Appellant does not dispute that in July 2011, Parker (1) told appellant that Parker

had concerns about appellant's management style and "dominant personality[,]" (2) wrote in a memo to appellant that appellant had caused "a loss of trust by the Register of [appellant,]" and (3) asked appellant to retire. Appellant also admits that as a result of Parker's problems with appellant's management style and loss of trust, appellant was demoted to Chief Administrative Officer and her personnel duties were transferred to other employees. Thus, contrary to appellant's argument, Parker did take an adverse employment action against appellant in July 2011.

Appellant offers no evidence that the events that focused on the basis of Parker's complaints about appellant's management style did not occur, or that Parker did not actually have issues with appellant's management style. As indicated above, appellant does not dispute that Parker expressed concerns to her in July 2011 about her management style and "dominant personality." Appellant also acknowledges that those concerns were raised by Parker again in January 2012 as a result of employee complaints regarding the training conducted by appellant. The fact that Parker expressed a desire to "start over" with appellant does not wipe out Parker's July 2011 statement about appellant's management style, especially in light of appellant's repetition of such behavior in January 2012. Finally, Parker's complaints about appellant's management style are not contradicted by appellant's performance reviews, because those reviews all occurred prior to July 2011, when Parker stated "that [appellant's] management style began to become unreasonably rigid, and the Register's employees began to approach her with complaints regarding [appellant's] management and disciplinary style with greater frequency and urgency."

The "loss of trust" was precipitated by appellant's two actions that occurred without Parker's consent in June and July 2011: moving her supervisor folder from the server to her desktop computer and approving a raise for an employee without Parker's permission. Appellant concedes that she moved the supervisor folder in July 2011, but argues that she did so to protect it from a virus, that no file was lost or damaged, and that she was not disciplined as a result of the incident.[5] As for the unauthorized salary increase for the employee, appellant does not dispute that Parker accused her of authorizing the increase without Parker's permission, but instead argues that she did have Parker's permission for the increase, and that she was never disciplined for this issue. Like the plaintiff in *Khoury*, appellant's only evidence that Parker's loss of trust in appellant is pretextual is "her insistence that the reason [the employer] stated was wrong"—i.e., that appellant authorized a salary raise with Parker's permission, and that appellant *had* a legitimate reason for moving the supervisor folder. *See* 268 F. Supp. 2d at 615. For these reasons, we hold that appellant adduced insufficient evidence that appellees' stated reasons for terminating appellant are pretextual.

Temporal Proximity of Protected Activity

Next, appellant argues that Parker's proffered reasons for terminating appellant are pretextual, because her termination immediately followed her Whistleblower Complaint. Appellees respond that the temporal proximity of appellant's Whistleblower Complaint

[5] Appellant also claims that Parker discarded the counseling memo regarding the supervisor folder. Appellant, however, later attached a copy of this memo, signed by Parker, to her Whistleblower Complaint.

and her termination, standing alone, are not sufficient to demonstrate pretext.

We conclude that the temporal proximity between appellant's filing of her complaints in December 2011 and January 2012 and her termination on January 30, 2012, does not sufficiently suggest pretext, because "gradual adverse job actions"—namely, appellant's demotion in July 2011 due to Parker's stated problems with appellant's management style and Parker's loss of trust in appellant—"began well before [appellant] had ever engaged in any protected activity[.]" *See Francis*, 452 F.3d at 309.

Administrative Leave

Appellant argues that Parker's stated reasons for terminating appellant are pretextual, because Parker told appellant in a letter dated January 9, 2012, that appellant was placed on administrative leave "pending the outcome of an investigation" that was prompted by appellant's Whistleblower Complaint against Parker. According to appellant, such letter makes no mention of appellant's management style and actually reveals the true reason for appellant's termination – the Whistleblower Complaint. Appellees respond that Parker had already decided to terminate appellant on January 5 or 6, 2012, before placing her on administrative leave. According to appellees, Parker decided to place appellant on administrative leave to allow Barzal to complete his investigation on behalf of the Comptroller's Office.

The following colloquy occurred during Barzal's deposition:

> [APPELLANT'S COUNSEL]: In your second meeting with [ ] Parker, did that occur -- do you have any memory of whether that occurred before [ ] Parker placed [appellant] on administrative leave?

[BARZAL]: **My second meeting probably occurred before. And I probably recommended, in general advice, that typically, when an employee is under investigation for any workplace misconduct or other issues, it's advisable to place the employee on paid administrative leave,** not to exceed ten days, per COMAR.

To remove the employee from the workplace, while an actual investigation is taking place, standard operating procedure.

(Emphasis added). Thus, Barzal's undisputed testimony corroborates appellees' contention that Parker placed appellant on administrative leave because of Barzal's investigation, not as a voluntary action to punish appellant for filing her complaint. Accordingly, Parker's statement that she was placing appellant on administrative leave "pending the outcome of an investigation" does not demonstrate pretext.

Parker's Deposition Statements

Finally, appellant argues that Parker's admission in her deposition, "that the complaint 'factored into' the termination decision, albeit not 'very much,' is sufficient, *even standing alone*, to qualify as unlawful retaliation." (Emphasis in original). As a result, appellant contends, "the statutory standard for retaliation has been met and the balance of the arguments made by the defense are simply irrelevant."

Parker's deposition statement upon which appellant relies occurred during the following colloquy:

[APPELLANT'S COUNSEL]: Why did you wait until January -- late January, between the 25th and the 30th, to

	tell [appellant] that you were considering terminating her given that you were considering terminating her way back when you put her out on administrative leave?
	***
[PARKER]:	Because I had a lot of things going on at that time, and I think I was out of the office at some point for a Registers' conference. There was a lot of interceding actions going on. And I wanted -- I don't make decisions lightly. If there was going to be an epiphany, there had to be one.
[APPELLANT'S COUNSEL]:	When you found out about the discrimination complaint, were you upset?
[PARKER'S COUNSEL]:	Objection. Vague.
[PARKER]:	Should I answer this?
[PARKER'S COUNSEL]:	You can answer.
[PARKER]:	It was just a continuation of all the other aggravations with this office.
[APPELLANT'S COUNSEL]:	So you were aggravated? Is that what you are telling me?
[PARKER'S COUNSEL]:	Objection. Misstates testimony.
[PARKER]:	Am I supposed to answer this?
[PARKER'S COUNSEL]:	You can answer. Were you aggravated?

[PARKER]:	It's just more aggravation in the office. It's just more of the same, what goes on every day in the place. You know, it's dealing with people, and you just take it in stride. That's all you can do.
[APPELLANT'S COUNSEL]:	**Okay. And how did it factor in to any of your decision-making at the time?**
[PARKER]:	**I don't think it factored in to it very much.**

(Emphasis added).

In response, appellees point to two other statements Parker made in her deposition, the first made before the colloquy quoted above, and the second after:

(1)

[APPELLANT'S COUNSEL]:	Did you ever ask for a mitigation conference?
[PARKER]:	Yes.
[APPELLANT'S COUNSEL]:	What did you understand that to mean when you requested it?
[PARKER]:	Come and tell me why I just shouldn't terminate you.
[APPELLANT'S COUNSEL]:	My information is that was on or about January 24th of 2012. Does that sound about right? It might have been a few days here or there. Does that sound about right to your memory?
[PARKER]:	In that time period, yes.

[APPELLANT'S COUNSEL]:	Okay. So she is placed on admin leave, we can see from the memo, on the 9th. A couple weeks later you asked her to come and tell you why you shouldn't terminate her. Is that right?
[PARKER]:	Right.
[APPELLANT'S COUNSEL]:	**The reason she was -- you were asking why you shouldn't terminate her is because of the complaint. Is that right?**
[PARKER]:	**No.**

***

(2)

[APPELLANT'S COUNSEL]:	Now, you agree that at the time of [appellant's] termination, she was on FMLA leave. Is that true? Or she was part of a FMLA-protected status?
[PARKER]:	She was in the FMLA.
[APPELLANT'S COUNSEL]:	Was that status -- did that influence your decision to terminate her employment at all?
[PARKER]:	No.
[APPELLANT'S COUNSEL]:	Did her race influence your decision to terminate her?
[PARKER]:	No.
[APPELLANT'S COUNSEL]:	Did her sex?

[PARKER]: No.

[APPELLANT'S COUNSEL]: **Did the fact that she had filed a whistleblower complaint?**

[PARKER]: **No.**

[APPELLANT'S COUNSEL]: **Did the fact that she had filed or had been in communication with the NAACP?**

[PARKER]: **No.**

[APPELLANT'S COUNSEL]: **How about the fact that she filed a complaint with the Maryland Commission on Civil Rights?**

[PARKER]: **No.**

(Emphasis added).

We agree with appellees that appellant's reliance on Parker's statement during her deposition—"I don't think [the Whistleblower Complaint] factored in to [her decision-making] very much"—is, in appellees' words, "a thin reed, indeed." This statement constituted an equivocal answer to a vague question about Parker's general decision-making in January 2012 and, in the face of the two unequivocal denials to specific questions about whether appellant's protected activity factored into Parker's decision to terminate appellant, does not constitute evidence admitting pretext in appellant's termination.

In sum, appellant did not meet her burden in adducing sufficient evidence that appellees' proffered reasons for terminating her were pretextual. Accordingly, the circuit

court did not err in granting summary judgment for appellees.[6]

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; APPELLANT TO PAY COSTS.

[6] In her brief, appellant argues that summary judgment was improper, because many material facts were in dispute, particularly the quality of appellant's job performance. According to appellant, "[t]he trial court simply ignored these significant disputes, and seems to have relied entirely on [appellees'] version of the facts[,]" despite the principle that, when ruling on a motion for summary judgment, facts should be interpreted in the light most favorable to the non-moving party. As we noted above, the disputes of fact regarding appellant's job performance are not material to determining whether Parker's stated reason for terminating appellant was not her real reason for the termination. *See Peninsula Reg'l Med. Ctr.*, 3 F. Supp. 3d at 474; *Rogosin v. Mayor of Balt.*, 197 F. Supp. 2d 345, 353 (D. Md. 2002). As a result, these factual disputes do not prevent summary judgment.