UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1648

September Term, 2015

UWANA COLLINS

v.

CATHOLIC CHARITIES

Eyler, Deborah S.,
Meredith,
Graeff,

JJ.

Opinion by Graeff, J.

Filed: October 24, 2016

*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.

Uwana Collins, appellant, filed a three-count complaint in the Circuit Court for Montgomery County against Catholic Charities, appellee, alleging violations of the Maryland Fair Employment Practices Act ("MFEPA"), Md. Code (2014 Repl. Vol.) § 20-601, *et seq.* of the State Government Article ("SG"), as adopted by Montgomery County Code ("MCC") § 27-19 (2007). Following discovery, appellee filed a motion for summary judgment, which the court granted.

On appeal, Ms. Collins raises the following three questions for our review.

> 1. Did the circuit court err in granting summary judgment in favor of Catholic Charities based on its conclusion that there was no genuine dispute of material fact regarding whether Ms. Collins was subjected to disparate treatment based on her age, sex, national origin, and race?
>
> 2. Did the circuit court err in granting summary judgment in favor of Catholic Charities based on its conclusion that there was no genuine dispute of material fact regarding whether Ms. Collins was subjected to retaliation for engaging in protected activity?
>
> 3. Did the circuit court err in granting summary judgment in favor of Catholic Charities based on its conclusion that there was no genuine dispute of material fact regarding whether Ms. Collins was subjected to a hostile work environment based on her age, sex, national origin, and race?

For the reasons set forth below, we shall affirm the judgment of the circuit court.[1]

FACTUAL AND PROCEDURAL BACKGROUND

Complaint

Ms. Collins, an African-American female, born in December of 1960, began employment with Catholic Charities on April 16, 2001, as a Family Support Specialist

[1] Catholic Charities moved to strike appellant's corrected brief, or in the alternative, to dismiss the appeal with prejudice. We are not persuaded by appellee's arguments in this regard, and therefore, we deny the motion.

(Case Manager) in the Families Forward program. She was promoted several times, and in 2011, she was promoted to Senior Program Manager for Operations in the Single Adult Transitional Shelter Services ("SATSS") program.[2] On April 4, 2013, Ms. Collins was terminated.

The complaint alleged that, in January 2012, Luis Vasquez, a Hispanic male in his 40s, was hired as the Division Director for Maryland programs. On May 28, 2012, Ferework Fuje, a male in his 30s who is African and of Ethiopian descent, was hired as the Director of Maryland programs and became Ms. Collins' direct supervisor. Immediately after Mr. Fuje was hired, he began to discriminate against her and treat her differently from the male employees on staff. For example, "in July and October 2012, Mr. Fuje required Ms. Collins to be available and on call for work while she was on scheduled vacations."

In July 2012, Ms. Collins discussed with Mr. Fuje that she needed a Program Coordinator to support her position. She explained that Brian Kanowitz, a Caucasian male in his 30s, who was employed as a Senior Case Manager, had assumed some of the duties of a vacant Resource Coordinator position. Mr. Fuje changed the position from Program Coordinator to Program Supervisor, and he promoted Mr. Kanowitz to that position, without Ms. Collins' knowledge and while she was on vacation, despite that Mr. Kanowitz reported to Ms. Collins. The Complaint alleged that Mr. Kanowitz reported directly to Mr. Fuje, who approved his leave. Mr. Fuje also gave one of Ms. Collins' three office

[2] Appellees assert that, in that capacity, Ms. Collins oversaw Catholic Charities' Montgomery County housing program, which included Bethesda House, Chase Partnership, and Dorothy Day Place.

spaces to Mr. Kanowitz. In September 2012, Mr. Fuje hired Kassye Moges, an Ethiopian male in his 20s, as a case manager, and he gave Mr. Moges another of Ms. Collins' office spaces.

Subsequent to these actions, Ms. Collins made a complaint to Catholic Charities that Mr. Fuje was treating her differently from the male employees, creating a hostile work environment, and undermining her supervisory authority. Catholic Charities took no action on her complaint.

Thereafter, Mr. Fuje began "a campaign to cause Ms. Collins' termination," by directing staff to report directly to him or Mr. Kanowitz instead of Ms. Collins, encouraging residents to make complaints about Ms. Collins, and refusing to address false and defamatory statements made by residents about Ms. Collins. Due to the complaints by residents about Ms. Collins and the programs she managed, Mr. Fuje required Ms. Collins to prepare a written plan of action to improve communications and client satisfaction.

In December 2012, Mr. Fuje held a meeting with Ms. Collins and Mr. Kanowitz. He gave Mr. Kanowitz the task of completing a client chore list. Mr. Kanowitz appointed the Shelter Monitor to complete the list, but it was never completed. Mr. Fuje also met with Ms. Collins and Mr. Vasquez to discuss an upcoming Council on Accreditation review. As part of the review process, Catholic Charities' facilities are visited by reviewers, who examine records, interview residents, and issue findings. In anticipation of the upcoming review, Ms. Collins had reviewed all program records in early December 2012, and she noted that the records needed minor revisions. Mr. Fuje assigned the task of revising the records to Mr. Kanowitz, but he did not complete the task. During the

subsequent review, there were "negative comments about the Chase Partnership program," including that certain records were incomplete or out-of-date. The program, however, was not cited for corrective action.

In January 2013, Ms. Collins received a Memorandum of Direction regarding performance issues, including client satisfaction, the reviewer's negative findings, and SATSS client complaints. This memorandum, a disciplinary action, included various provisions to improve the program, including Ms. Collins changing her schedule to supervise staff at Dorothy Day Place and make herself available for clients' requests. Prior to this time, Ms. Collins worked 9:00 a.m. to 5:00 p.m., Monday through Friday. As part of the disciplinary action, however, Mr. Fuje changed her shift and required her to work 2:00 p.m. to 10:00 p.m. on Tuesdays and Wednesdays and 1:00 p.m. to 9:00 p.m. on Fridays. The complaint asserted that no other employee responsible for the programs was disciplined or had his or her shifts changed. When Ms. Collins informed Mr. Fuje that Mr. Kanowitz should be written up for his failure to perform assigned duties, Mr. Fuje responded that, because Ms. Collins was the leader, she should be written up, and he directed her "to just talk to [Mr. Kanowitz] so he could learn from his mistake."

The complaint alleged that Mr. Fuje continued to undermine Ms. Collins' authority, and by March 2013, he stopped communicating with her. On April 4, 2013, Mr. Fuje notified Ms. Collins that she was being terminated. Ms. Collins was replaced with Delalem Zemichael, a younger male from Ethiopia.[3]

[3] Mr. Zemichael's first name is spelled "Delalem" in the complaint and "Zelalem in the Motion for Summary Judgment."

Count I of the complaint alleged that Catholic Charities violated the MFEPA, as adopted by Chapter 27 of the MCC when, on the basis of Ms. Collins' race, sex, national origin, and age, she was subjected to discriminatory employment practices, including: false and defamatory comments about her performance; removal of her supervisory duties and office space; discipline for errors of younger male employees; changes in her work schedule; refusal to communicate with her as a supervisor; discipline and termination based on false accusations about her performance; and replacement with a younger male employee. Counts II and III alleged that Catholic Charities violated the MFEPA, as adopted by Chapter 27 of the MCC when, on the basis of Ms. Collins' race, sex, national origin, and age, she was subjected to a hostile work environment and retaliated against after she engaged in a protected activity, i.e., complaining that Mr. Fuje was treating her differently from the male staff.[4]

Interrogatories

During discovery, Catholic Charities propounded interrogatories on Ms. Collins. Of particular relevance, Interrogatory No. 8 asked whether Ms. Collins intended to rely on any admissions made by Catholic Charities or its agents, to which Ms. Collins responded:

> Ferework Fuje and Brian Kanowitz made inappropriate statements about my age and sex. In the winter of 2012, I encountered Mr. Fuje and Mr. Kanowitz conversing and inquired as to the substance of their conversation. Mr. Fuje commented that I was old and would not understand, and Mr. Fuje and Mr. Kanowitz began to laugh.

[4] Counts II and III did not specifically refer to "race, sex, national origin, and age," in the caption, but they referred to unlawful discrimination because of "color, religion, sex, age, national origin, marital status, or physical or mental handicap."

> In early 2013, Mr. Fuje and Mr. Kanowitz were looking for coffee in the kitchen, and I gave them a suggestion concerning where to find the coffee. Mr. Kanowitz whispered something to Mr. Fuje, and I asked what he had said. Mr. Fuje said, "It's a man thing; you wouldn't understand."
>
> On one occasion, Mr. Fuje belittled and undermined me by commenting that I was experiencing premenstrual syndrome or PMS. I responded that I am past the age of PMS. In a later conversation with another male employee, Mr. Fuje remarked to the other employee that I was old and no longer had a menstrual cycle.

In response to Interrogatory No. 17 and Interrogatory No. 20, requesting facts to support her contention that she was terminated as a result of race/national origin discrimination, Ms. Collins responded:

> During my tenure at Catholic Charities, all my performance evaluations rated my performance as Satisfactory or Above Satisfactory, and I received several promotions as a result of my performance. Before Mr. Fuje became my supervisor, none of my supervisors has ever took [sic] any disciplinary actions against me, and I never received any verbal or written notice of performance deficiencies.
>
> Starting in Spring 2012, Mr. Fuje began to hire individuals of African and/or Ethiopian descent almost exclusively. Mr. Fuje replaced me with an Ethiopian male and promoted another Ethiopian male from Case Manager to Program Supervisor, even though this individual was not qualified for the position of Program Supervisor and had no supervisory experience.
>
> From the start of Mr. Fuje's employment . . . , he began to treat me differently than male, younger, and African/Ethiopian employees. . . . [M]y job duties and responsibilities were removed, my request for support for my position was denied, and Mr. Fuje withheld information from me, including information that was directly relevant to the performance of my duties. Mr. Fuje took away my two offices and gave them to young males who were of Ethiopian and Caucasian descent. He also treated me with hostility, refused to address false and defamatory statements made about me by residents, and changed my shift.
>
> In addition, Mr. Fuje undermined my authority. He removed my duties and gave some of those duties to my subordinates and allowed my subordinates, including Mr. Kanowitz, to report directly to Mr. Fuje. He

> refused to inform me about information directly concerning my programs and duties, ceased communicating with me, and allowed complaints to be made by clients directly to Mr. Kanowitz. Further, Mr. Fuje prevented me from writing up Mr. Kanowitz for failing to perform his duties and for issuing a memorandum in my name without my permission or knowledge. While employees who were young, African/Ethiopian and/or male were not reprimanded for severe performance failings, I was made the scapegoat of the deficiencies in other employees' performance, including Mr. Kanowitz.

In response to Interrogatory No. 19, requesting facts to support her contention that she was terminated as a result of her gender, Ms. Collins responded:

> Mr. Fuje treated male employees better than female employees. While he had a collegial and friendly relationship with male employees, he was demanding and dictatorial when addressing female employees. He frequently made up insignificant and repetitive tasks to assign me to exert his authority. For example, Mr. Fuje asked me to check all files for the entire program within a short time frame. Once I had completed this task, he asked me to go back and provide him with a list of every client file that I had reviewed.
>
> Repeatedly, Mr. Fuje prevented me from writing up a male employee who was having serious work performance issues and instead, directed me to only talk to the employee, despite his frequent, recurring errors. Moreover, Mr. Fuje held me responsible for issues created by this male employee's performance failings. The performance deficiencies of male employees were consistently disregarded, and male employees with performance deficiencies were even promoted. Mr. Fuje required me to work harder than male employees and expected me to be available to work, even if I was sick or on vacation. In contrast, if a male employee was on sick leave, I was required to cover for the male employee.
>
> As described above, Mr. Fuje undermined my authority by allowing a male employee to report directly to him even though I was the employee's supervisor. He created a male dominated work force and directed employees to report to a male supervisor, rather than me.

Motion for Summary Judgment

On June 5, 2015, following discovery, Catholic Charities filed a motion for summary judgment. In its motion, Catholic Charities asserted that the following facts were undisputed, attaching exhibits supporting its assertions.

Ms. Collins was employed as Senior Program Manager in the SATSS program with oversight of all Montgomery County housing programs. Ms. Collins was responsible for supervising approximately 25 employees, and the racial breakdown of the employees was "predominantly African-American and the gender makeup was 50/50 male to female." As Senior Program Manager, Ms. Collins was directly responsible for ensuring that the SATSS program complied with the Montgomery County Department of Health and Human Services contracts and that timely database entries and responses were made to unusual incident reports and client grievances.

On May 28, 2012, Mr. Fuje, a 35-year-old African-American male, became Ms. Collins' direct supervisor. He also directly supervised Dora Carter, a 44-year-old African-American female, who also was a Program Manager of the SATSS Program. In May 2012, Ms. Collins had exclusive control of three office spaces, in different locations, each equipped with computers. Given the misallocation of company resources, Mr. Fuje made the managerial decision to allow Ms. Collins to keep her main office, but with respect to the other two locations, he gave her shared office access with other employees.

In 2012, three clients filed grievances against Ms. Collins for denying them food to eat and allowing clients to wash their hair only in a mop closet or mop sink. Additional complaints were filed, alleging that Ms. Collins provided the wrong size toilet paper at one

program, and she required a client to write an essay about her life as a form of discipline. On December 18, 2012, Mr. Fuje and Mr. Vasquez met with Ms. Collins to discuss: (1) low satisfaction ratings of one of the housing programs she was responsible for overseeing; (2) the Council of Accreditation review findings relating to poor file maintenance; and (3) SATSS program client complaints concerning Ms. Collins' inappropriate disciplinary actions and unprofessional conduct.

On January 4, 2013, Tanya Jones, a contract monitor for special needs housing with the Montgomery County Department of Health and Human Services, informed Mr. Vasquez that the SATSS program had not served the required 55 clients in December 2012 and the preceding months. She advised that the department would not pay the fixed-priced contract if Catholic Charities continued to fail to meet its requirements.

On February 19, 2013, Reverend T. Kenneth Venable, pastor of the Clinton African Methodist Episcopal Zion Church, wrote a letter to Mr. Vasquez expressing disappointment with the way the Dorothy Day women's shelter had handled the church's scheduled visit, as neither shelter staff nor residents were aware of the event. As Senior Program Manager, Ms. Collins accepted responsibility for the scheduling error.

On February 22, 2013, Vicki Barnes, Director of Planning and Performance Improvement for Catholic Charities, informed Mr. Fuje that only two unusual incident

reports from the SATSS program had been entered into the database between August 2012 and January 2013.[5] It was Ms. Collins' responsibility to ensure that the task was completed.

On March 5, 2013, Tracie Bailey, Senior Program Accountant for Catholic Charities, contacted Ms. Collins regarding the spending of a grant intended for job readiness and life skills training and workshops for SATSS clients. No funds had been allocated to those programs, and no workshops were held from July 2012 to March 2013.

On March 14, 2013, Mr. Fuje, Mr. Vasquez, and representatives of the Human Resources Department reviewed Ms. Collins' job performance and the actions taken to put her on notice of, and to improve, her deficiencies. On April 4, 2013, Mr. Fuje sent Ms. Collins a letter advising that a decision had been made to terminate her employment with Catholic Charities.

On April 8, 2013, Ms. Collins advised the Human Resources Director that she wanted to appeal the decision to terminate her employment. On April 22, 2013, Ms. Collins filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC"), alleging discrimination based on race, age, sex, and national origin. The following day, Ms. Collins informed Human Resources that she was not pursing an appeal of the termination, but instead, she was pursuing an EEOC claim. On October 9, 2014, the EEOC dismissed the charge.

[5] According to the Single Adult Transitional Shelter Services ("SATSS") Program Rules Packet given to clients, Unusual Incident Reports are generated for client "rule infractions."

In August 2013, Mr. Zemichael, a 38-year-old Ethiopian male, was hired to replace Ms. Collins as Senior Program manager of the SATSS program. Catholic Charities stated that Mr. Zemichael was a "force candidate" hire because Mr. Fuje's first choice, Fatmata Katmara, an African-American woman, accepted another full-time position.

Catholic Charities asserted that, based on the undisputed facts, Ms. Collins' work performance in 2012 and 2013 "fell woefully short" of its expectations, and her termination "was based upon repeated and well documented performance deficiencies." It stated that her termination was "solely a direct result of her unsatisfactory work performance and unprofessional behavior," and therefore, she could not establish a prima facie case of discrimination.[6]

With respect to Ms. Collins' claim for disparate treatment based on age, sex, race and national origin, Catholic Charities asserted that this claim failed as a matter of law. Ms. Collins presented no direct or circumstantial evidence to show that she was treated differently from the opposite sex, i.e., similarly situated male employees, and she made no allegation of any male comparators who were supervised by the same supervisor, subjected to the same performance standards, engaged in the same conduct, or maintained the same job duties and responsibilities as she did. Although Ms. Collins "broadly allege[d] that Mr. Fuje gave [Mr.] Kanowitz favorable treatment; Mr. Kanowitz did not have a similar

[6] Catholic Charities also stated that Ms. Collins had a problem with alcohol dependence. Although she had remained sober for approximately twelve years, she began to drink again in November 2012, while still employed with Catholic Charities. As Ms. Collins notes, however, that there was no evidence that Ms. Collins "drank at work or that her performance or termination had anything to do with alcohol consumption."

position or the same job responsibilities [] as" Ms. Collins. Moreover, Ms. Collins was not the only female manager being supervised by Mr. Fuje in 2012 and 2013; he also supervised Ms. Carter, as well as Ms. Katmara, a case manager at Chase Partnership House, one of Catholic Charities' housing programs.

With respect to a claim of age discrimination, Catholic Charities asserted that Ms. Collins failed to present any direct evidence to support this claim, making only a "bold allegation of an isolated incident in 2012, where she claims that Mr. Fuje and Mr. Kanowitz were having a conversation and Mr. Fuje commented that [she] was 'old and would not understand.'" Indeed, it asserted, Ms. Collins, who was 52 years old when she was terminated, was in the same age group as her immediate co-workers: Ms. Carter was forty-four, Mr. Fuje was thirty-five, Mr. Vasquez was forty-four, Mr. Kanowitz was forty-two, and Mr. Zemichael, who eventually replaced Ms. Collins, was thirty-eight.

With respect to race and national origin, Catholic Charities asserted that Ms. Collins presented no direct evidence that her termination was based upon her being African-American, as opposed to Ethiopian, noting that the department she supervised was composed primarily of people of African-American descent. And, although Mr. Fuje hired candidates of Ethiopian descent, Ms. Collins testified at her deposition that she personally interviewed many of the new hires, and she "never once reported that she thought any of the candidates were underqualified for their respective positions." Moreover, Mr. Fuje testified that Mr. Zemichael was not his first choice to replace Ms. Collins, but rather, Ms. Katmara, an African-American woman, was his first choice.

Turning next to the hostile work environment claim, Catholic Charities asserted that Ms. Collins' claim was limited to three incidents in 2012 and 2013 when: (1) Mr. Fuje commented that Ms. Collins was "old and would not understand"; (2) Ms. Collins asked Mr. Kanowitz what he had said to Mr. Fuje, and Mr. Fuje responded that "it was a man thing, you wouldn't understand"; and (3) Mr. Fuje commented to Mr. Kanowitz that Ms. Collins was experiencing premenstrual syndrome. These three isolated incidents, which Mr. Fuje denied occurred, did not rise to the level of an abusive working environment, and they did not prompt Ms. Collins to complain to Human Resources, although she was "well aware [of] Catholic Charities policy prohibiting discrimination and sexual harassment, and setting forth multiple mechanisms under which employees could report concerns about inappropriate behavior."

With regard to her retaliation claim, Catholic Charities asserted that, although Ms. Collins did engage in a protected activity, i.e., filing a complaint with the EEOC, she did not do so until after she was terminated. Furthermore, she never complained about being discriminated against while she was employed; thus, no temporal proximity existed to show that her termination was causally related to the protected activity.

Opposition to Motion for Summary Judgment

Ms. Collins filed an opposition, attaching an affidavit, in which she essentially attested to the allegations in her complaint and the assertions in her answers to interrogatories. She stated that, throughout her employment, she had "performed in an exceptional manner." In support, she referenced three documents. First, she attached a performance evaluation, dated September 11, 2012, indicating that, for the period of

January 17 to June 30, 2012, she "me[]t expectations."[7] Second, she attached an email to "All Employees," dated July 27, 2012, which recognized a "handful of programs that did a great job in fulfilling their commitment to the ISR process" and recognized Ms. Collins and her team for having accurate files for the previous two quarters.[8] Third, she attached an email to "All Employees," dated January 16, 2013, commending them for an "outstanding" Pre-Commission Review Report from the Council of Accreditation, with the exception of "1 item that required a response/corrective action." Ms. Collins also attached client surveys from January, February, and March 2013, from clients of two programs that she supervised, in which many clients indicated that they were "satisfied" or "very satisfied" with the services they were receiving from the programs.[9]

Hearing

At the hearing, counsel for Catholic Charities argued that Ms. Collins could not prove a prima facie case of discrimination, and she had provided no evidence to dispute its evidence "that she was not performing at the time of termination and that was the real

[7] The evaluation, however, also indicated that she needed improvement in the area of leadership and "mission effectiveness," noting that "SATSS programs need to improve overall environment for clients served (especially related to punitive nature and inconsistent enforcement of rules)." As a result of those negative reviews, Ms. Collins was required to "[a]ttend leadership-oriented training by 12/1/12" and to "[w]ork with supervisor in supervision on leadership (related to CC mission and dignified housing)."

[8] The e-mail indicated that Catholic Charities was going to "start sending out a superstar of the week email," which would "acknowledge anyone who has just done a great job embracing the . . . process and demonstrating great leadership."

[9] The client surveys, however, also indicated that some clients were "dissatisfied" or "very dissatisfied."

reason for her adverse job action, which was termination." It asserted that Ms. Collins admitted in her deposition that she did not perform duties that were her responsibility, and she did not "assert in her opposition or anywhere in this case that those things didn't happen." Instead, she asserted only that, "even though she was the head supervisor for these programs, when things went poorly, it was never her fault." Counsel for Catholic Charities argued that nothing relied on by Ms. Collins for her assertion that Catholic Charities did not have a legitimate, non-discriminatory reason for her termination, showed that "she was meeting her employer's expectations" or "demonstrate[d] that she was performing well at the time of the adverse job action." Nor did she present evidence that "disproves or claims that any of the legitimate non-discriminatory reasons offered by Catholic Charities [were] false or that discrimination was the true reason for her adverse job action."[10]

Addressing her schedule change, Catholic Charities asserted that the schedule change was "so she can be there at a time when clients needed her the most," and she agreed to change her schedule, as had been done with other employees. Catholic Charities pointed to Ms. Carter, a similarly-situated employee, who also worked a schedule that allowed her to be available to clients.[11] With regard to the reduction in her office space,

[10] Counsel for Catholic Charities pointed to five things relied on by Ms. Collins: her affidavit, the July 2012 email, the January 2013 email, the January, February, and March 2013 "client surveys," and the September 2012 evaluation.

[11] Counsel for Ms. Collins disputed that other employees' schedules were changed, stating that only Mr. Fuje testified that other employees' hours had changed, there was "no credible" evidence in the record to support Mr. Fuje's assertion, and Ms. Collins had testified that Mr. Kanowitz' hours were not changed.

Catholic Charities asserted that Mr. Fuje determined that it "wasn't economically sound" to maintain three offices for one employee.

With regard to the claim regarding a hostile work environment, Catholic Charities asserted that Ms. Collins had to show "harassment by co-workers, unwelcome, based on protected status, and it has to be sufficiently severe or pervasive to create an abusive atmosphere," objectively and subjectively. Ms. Collins could not meet the subjective prong because she testified that she never reported any "offhand comments" because "they were . . . no big deal." With regard to her duties being reassigned to Mr. Kanowitz, Catholic Charities stated that Ms. Collins requested that a position be filled to take away some of her duties, and therefore, she could not claim a hostile work environment due to the creation of a new position.

With respect to the retaliation claim, Catholic Charities asserted that the only protected activity alleged by Ms. Collins was that she complained to Mr. Vasquez about Mr. Fuje's "different" treatment of Mr. Kanowitz. It argued that this complaint was insufficient to "rise to the level of protected activity."[12] Catholic Charities asserted that, even if her complaint about "different" treatment was sufficient to constitute a protected activity, it had presented ample evidence of legitimate, non-discriminatory reason for Ms. Collins' termination.

[12] Ms. Collins testified at her deposition that she told Mr. Vasquez "that Mr. Fuje was treating me differently than [Mr. Kanowitz], that he was favoring [Mr. Kanowitz]." When asked if she complained "that [Mr.] Fuje was treating [Mr. Kanowitz] better than you or all men," Ms. Collins stated that "he was treating [Mr. Kanowitz] differently. Not better. I just said differently."

Counsel for Ms. Collins argued that each element of each claim had been established. Initially, counsel argued that "the reasons given for the termination of Ms. Collins have all proven to be false" because the client surveys were "clear" that "clients were generally satisfied with the services that they were receiving." Although Ms. Collins was "ultimately responsible for the program as the senior program manager," it was Mr. Kanowitz who was responsible for any client complaints, and because he was not given any discipline at all, she was treated differently from him. With respect to the assertion that Ms. Collins did not spend funds associated with a grant from Montgomery County, counsel asserted that she had distributed the grant funds appropriately by purchasing computers and holding seminars. With respect to allegations that Ms. Collins' performance was poor, counsel asserted that she was exceeding expectations in her 2012 performance appraisal. Counsel denied that needing improvement "in the leadership area" had anything to do with Ms. Collins needing "to improve in this area," nor was the appraisal "in any way some form of discipline or notice . . . that she was being disciplined in any way." Rather, it was a suggestion "to her that she identify some area that she could improve in, and she said, I'm doing a million things. I could . . . improve in the leadership area."

The court noted that it was the supervisor's testimony regarding the appraisal that "is significant with respect to that piece of evidence," as opposed to Ms. Collins' testimony. Counsel responded that "overall . . . the performance evaluation was satisfactory."

Regarding the complaints against Ms. Collins, counsel noted that Ms. Collins testified that the complaints were false. He asserted that "all of these reasons that they gave for terminating Ms. Collins . . . are absolutely false and refuted by the evidence that's in

the record." Counsel argued Ms. Collins had "met the elements of [her] prima facie case, as well as she's shown pretext on these reasons that they claim the actions are taken against her." She argues that the evidence supported the retaliation claim, as well as the hostile work environment claim, asserting: "She's established that the treatment she received is severe and pervasive, interfered with her employment, and we believe she's established each element of the hostile work environment claim, as well."

Court's Ruling

On August 28, 2015, the court held a hearing on the summary judgment motion. At the conclusion of the hearing, the court ruled from the bench as follows.

> I have looked at these motions in great de[tail], and including the exhibits attached thereto. I've read the motion, the opposition and the reply, and notwithstanding, in Maryland I understand there's a strong preference for trials where there are a dispute of facts, in this case I believe it is appropriate for grant of a summary judgment motion. To the large, to the extent that the plaintiff seeks to create [a] material dispute of fact, in my part, in my review of the opposition, it largely . . . relies upon either inadmissible [testimony] because it's hearsay, conjecture and/or supposition from the plaintiff, which would not be admissible. When you look at the facts of the case, it appears to me for the reasons set forth by the defendants that they are entitled to judgment on all three counts, so judgment is granted in favor of the defendants on the complaint.

The court did not issue a memorandum opinion.

STANDARD OF REVIEW

Maryland Rule 2-501(f) governs motions for summary judgment and provides that a trial court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." *Accord Reiter*

v. Pneumo Abex, LLC, 417 Md. 57, 67 (2010). A determination "[w]hether a circuit court's grant of summary judgment is proper in a particular case is a question of law, subject to a non-deferential review on appeal." *Tyler v. City of College Park*, 415 Md. 475, 498 (2010). Thus, the standard of review of a trial court's grant of a motion for summary judgment on the law is *de novo*. *D'Aoust v. Diamond*, 424 Md. 549, 574 (2012).

When we consider a circuit court's order granting summary judgment, we "review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Rhoads v. Sommer*, 401 Md. 131, 148 (2007). *Accord Reiter*, 417 Md. at 67 ("'[W]e independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.'") (quoting *Livesay v. Baltimore County*, 384 Md. 1, 10 (2004)).

"'[T]he purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried.'" *Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 534 (2003) (quoting *Taylor v. NationsBank*, 365 Md. 166, 173 (2001)). For summary judgment purposes, "'[a] material fact is a fact the resolution of which will somehow affect the outcome of the case.'" *Pence v. Norwest Bank Minn., N.A.*, 363 Md. 267, 279 (2001) (citation omitted).

"'[T]he mere existence of a scintilla of evidence in support of the plaintiffs' claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the plaintiff.'" *Crickenberger v. Hyundai Motor*

America, 404 Md. 37, 45 (2008) (quoting *Beatty v. Trailmaster Prods, Inc.*, 330 Md. 726, 738-39 (1993)). "'[W]hile a court must resolve all inferences in favor of the party opposing summary judgment, those inferences must be reasonable ones.'" *Id.* (quoting *Beatty*, 330 Md. at 739). "The party opposing summary judgment must provide more than 'general allegations which do not show facts in detail and with precision.'" *Butler v. S & S P'ship*, 435 Md. 635, 668 (2013) (quoting *Rite Aid Corp. v. Hagley,* 374 Md. 665, 684 (2003)). Moreover, "'a party must provide the court with more than a different theory of how the events transpired[, and] conclusory statements, conjecture, or speculation by the party resisting the motion will not defeat summary judgment[.]'" *Id.* at 668 (quoting *Benway v. Md. Port Admin.*, 191 Md. App. 22, 46 (2010)). Maryland Rule 2-501(c) provides in pertinent part that an "affidavit . . . opposing a motion for summary judgment . . . shall set forth such facts as would be admissible in evidence." *Accord Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 306 (2007).

DISCUSSION

I.

Disparate Treatment

Ms. Collins contends that the circuit court erred in granting summary judgment against her on her claim of disparate treatment based on sex and age.[13] She asserts that,

[13] In the Questions Presented section of the Corrected Brief filed, Ms. Collins alleges that the circuit court erred in granting summary judgment on her claim of disparate treatment "based on her age, sex, national origin, and race." Catholic Charities moved to strike this brief or dismiss the appeal because the original brief filed asserted disparate treatment based only on "age and race." As we previously noted, although we need not strike Ms. Collins' Corrected Brief, we will address only the issues she (continued . . .)

although she was not required to establish a prima facie case of discrimination to survive a motion for summary judgment, she did so, and she refuted Catholic Charities' claim that she was terminated for poor performance.

Catholic Charities contends that the circuit court properly granted its motion for summary judgment on the claim of disparate treatment. It asserts that the evidence showed that Ms. Collins' "termination was a direct result of unsatisfactory work performance and unprofessional behavior," and this justified summary judgment in its favor. It asserts that Ms. Collins also failed to show "that she was treated differently than any other similarly situated employees not of [her] age and sex."

As this Court recently explained:

> "The common law rule, applicable in Maryland, is that an employment contract of indefinite duration, that is, at will, can be legally terminated at the pleasure of either party at any time." *Molesworth v. Brandon*, 341 Md. 621, 628-29, 672 A.2d 608 (1996) (quoting *Adler v. Am. Standard Corp.*, 291 Md. 31, 35, 432 A.2d 464 (1981)). There are, however, exceptions to "the terminable at will doctrine that abrogate an employer's absolute right to discharge an at will employee for any or no reason." *Adler*, 291 Md. at 35, 432 A.2d 464.

Lockheed Martin Corp. v. Balderrama, 227 Md. App. 476, 502, *cert. denied*, 448 Md. 724 (2016).

Exceptions to the absolute right to discharge an employee are found in MCC § 27-19, which states, in pertinent part, as follows:

> (a) A person must not because of the race, color, religious creed, ancestry, national origin, age, sex, marital status, sexual orientation, family responsibilities, or genetic status of any individual or disability of a qualified

(. . . continued) adequately presents. Because her substantive argument relates solely to disparate treatment due to her "age and sex," that is the issue we will address.

> individual, or because of any reason that would not have been asserted but for the race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, sexual orientation, family responsibilities, or genetic status:
>
> (1) For an employer:
>
> (A) fail or refuse to hire, fail to accept the services of, discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment.

When an employee brings a claim of intentional age or sex discrimination, there are two different methods of proof. First, a plaintiff may rely on direct evidence that discrimination motivated the adverse employment decision. *Williams v. Maryland Dep't of Human Res.*, 136 Md. App. 153, 163 (2000). Second, a plaintiff may establish discrimination by proof of circumstantial evidence under the judicially created scheme established by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Williams*, 136 Md. App. at 163.

Here, Ms. Collins relies on both methods of proof. Initially, she asserts that she produced direct evidence of discrimination.

In that regard, this Court has explained: "Evidence is 'direct' . . . when it consists of statements by a decisionmaker that directly reflect the alleged animus and bear squarely on the contested employment decision." *Williams*, 136 Md. App. at 163 (citation and quotations omitted). In *Williams*, we concluded that a statement by the employer's Director of Audits alleged that "a lady needed to be selected" qualified as direct evidence of discriminatory intent with regard to the employer's failure to select the plaintiff as a finalist for a new position. *Id.* at 171-72.

Here, in support of her claim of direct evidence of discrimination, Ms. Collins points to three comments made by Mr. Fuje. First, in the winter of 2012, Mr. Fuje and Mr. Kanowitz were talking. Ms. Collins asked what they were talking about, and Mr. Fuje responded that "she was old and would not understand." Second, in early 2013, Mr. Fuje and Mr. Kanowitz were talking and Mr. Kanowitz whispered to Mr. Fuje. Ms. Collins "asked what he had said," and Mr. Fuje responded: "It's a man thing; you wouldn't understand." Third, Ms. Collins asserts that Mr. Fuje "belittled and undermined [her] by commenting that she was experiencing premenstrual syndrome." She responded that she was "past the age of PMS," and Mr. Fuje subsequently "remarked to another employee that she was old and no longer had a menstrual cycle."

These comments by Mr. Fuje certainly were unfortunate and unprofessional. They did not, however, rise to the level of direct evidence of intent to discriminate.[14] Accordingly, we turn to the second method of proof.

Under the *McDonnell Douglas* framework, applicable when the complainant does not have direct proof of an intent to discriminate, there is a multi-step analysis. The complainant first must establish a prima facie case of discrimination, which gives rise to a rebuttable presumption of discrimination. *State Comm'n on Human Relations v. Kaydon Ring & Seal, Inc.*, 149 Md. App. 666, 676-77 (2003). If the plaintiff meets his or her burden in this regard, the burden of production shifts to the employer to state a legitimate, non-

[14] We acknowledge that Mr. Fuje denies making these statements. As previously explained, however, at the summary judgment stage, the circuit court and this Court are required to construe the record in the light most favorable to Ms. Collins.

discriminatory reason for the action complained about. *Id.* at 676. If the employer meets this burden, the burden shifts back to the employee to "prove, by a preponderance of the evidence, that the employer's stated reason for the termination was a pretext." *Id.* at 676-77.[15]

To prove a prima facie case of disparate treatment, a plaintiff must show:

> (1) she is a member of a protected class; (2) she was performing at a level that met her employer's legitimate expectations at the time of the adverse employment action; (3) she suffered an adverse employment action; and (4) her employer treated similarly situated employees outside her protected class more favorably.

Williams v. Silver Spring Vol. Fire Dep't, 86 F. Supp. 3d 398, 420 (D. Md. 2015). *See also Dobkin v. Univ. of Baltimore Sch. of Law*, 210 Md. App. 580, 593 (2013) (prima facie case in claim of failure to hire based on unlawful discrimination).

Here, the parties do not dispute that Ms. Collins is a member of a protected class and that she suffered an adverse employment action, i.e., Ms. Collins was terminated from her job. With respect to the second element, however, whether she was performing in a

[15] Ms. Collins asserts, citing federal law, that she was not required, at the summary judgment stage, to follow the burden shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and make out a prima facie case. Rather, she asserts, the question is whether she "produced sufficient evidence for a reasonable jury to find that the employer's asserted non-discriminatory reason was not the actual reason and that the employer intentionally discriminated against the employee on the basis of race, color, religion, sex, or national origin?" *Brady v. Office of Sergeant at Arms*, 520 F.3d 490, 495 (D.C. Cir. 2008). Although we agree that, once the employer asserts a legitimate, non-discriminatory reason for the adverse action, the question becomes whether there was intentional discrimination, as we recently discussed, "evidence of the plaintiff's *prima facie* case can be helpful in determining the ultimate issue" of discrimination. *Lockheed Martin Corp. v. Balderrama*, 227 Md. App. 476, 506, *cert. denied*, 448 Md. 724 (2016). Accordingly, we will discuss Ms. Collins' burden in this regard.

manner that met Catholic Charities' legitimate expectations, Catholic Charities asserts, and the record reflects, that she did not satisfy this element of a discrimination claim.

Catholic Charities presented ample evidence that Ms. Collins' work performance was not meeting its legitimate expectations. As indicated in the factual background, there were documented deficiencies in Ms. Collins' performance, including low client satisfaction ratings, failure to oversee the client grievances process for the SATSS Program, and inappropriate disciplinary action given to clients. Furthermore, Ms. Collins failed to ensure that the SATSS Program abided by Department of Health and Human Services requirements, thereby jeopardizing program funding, failed to ensure that unusual incident reports were entered into the database, failed to maintain positive volunteer relations with the community, and failed to ensure that grant funds were spent pursuant to the approved budget for client services, including workshops.[16]

Despite these deficiencies, Ms. Collins contends that there was evidence showing that she was meeting the expectations of her employer. In support, she cites a performance evaluation, dated September 11, 2012, which indicated that, for the period of January 17 - June 30, 2012, she "me[]t expectations." This document, however, is not helpful to Ms. Collins, for several reasons.

Initially, the evaluation covers the time period from January - June 2012, and the relevant time period was later. The inquiry is whether Ms. Collins was meeting her

[16] In her Reply Brief, Ms. Collins lists reasons why these asserted deficiencies were not her fault. To the extent that these assertions are preserved for review, the record does not support the argument that Catholic Charities could not hold her, as supervisor of the program, accountable for the deficiencies.

employer's legitimate expectations at the time of her termination, in April 2013. *See O'Connor v. Consolidated Coin Caterers Corp.*, 56 F.3d 542, 547 (4th Cir. 1995) (a "good performance review" with respect to 1989 performance, and a "large" bonus in 1989 "are irrelevant because O'Connor was not performing well in August of 1990, the time of termination"), *rev'd on other grounds*, 517 U.S. 308 (1996). *See also Clay v. City of Chicago Dep't of Health*, 143 F.3d 1092, 1094 (7th Cir. 1998) ("Proof that plaintiff was once considered an adequate employee before her discharge does not suggest that defendants' explanation for her discharge was" illegal.).

Moreover, although this document showed that Ms. Collins met expectations in some areas of her job, it also reflected that she needed improvement in two areas, leadership skills and mission effectiveness, noting that "SATSS programs need to improve overall environment for clients served (especially related to punitive nature and inconsistent enforcement of rules)." As a result of those negative reviews, Ms. Collins was required to "[a]ttend leadership-oriented training by 12/1/12" and "[w]ork with supervisor in supervision on leadership (related to CC mission and dignified housing)."

Ms. Collins further relies on an email addressed to "All Employees," dated July 27, 2012, indicating that Catholic Charities was going to "start sending out a superstar of the week email," which would "acknowledge anyone who has just done a great job embracing the . . . process and demonstrating great leadership." Although the email recognized Ms. Collins and her team for having accurate files for the previous two quarters, it did not single Ms. Collins out as a "superstar," as she suggests. In any event, as with the performance evaluation, it reflected performance prior to the relevant time period.

Finally, she relies on an email to "All Employees," dated January 16, 2013, commending "all employees" for an "outstanding" Council of Accreditation review, with the exception of "1 item that required a response/corrective action." Notably, the one corrective action referenced was attributable to Ms. Collins. This document does not support a claim that she was meeting her employer's expectations.

In addition to these three documents, Ms. Collins offered only her personal belief that "her overall performance was good." Her personal belief, however, is not relevant. *See DeJarnette v. Corning, Inc.*, 133 F.3d 293, 299 (4th Cir. 1998) ("'[I]t is the perception of the decision maker which is relevant,' not the self-assessment of the plaintiff.") (quoting *Evans v. Technologies Applications & Serv. Co.*, 80 F.3d 954, 960-61 (4th Cir. 1996)).

Ms. Collins failed to establish a prima facie case of discrimination under the framework set forth in *McDonnell Douglas*. There was no genuine dispute that Ms. Collins' job performance did not meet her employer's legitimate expectations at the time of her termination.[17]

[17] Ms. Collins asserts that, in addition to termination, she suffered adverse actions in the form of written discipline, a change in her work schedule, and reassignment of her duties and office to younger males. As this Court recently made clear, "'not everything that make an employee unhappy is an actionable adverse action.'" *Balderrama*, 227 Md. App. at 508 (quoting *Montandon v. Farmland Indus., Inc.*, 116 F.3d 355, 359 (8th Cir. 1997)). An adverse employment action is defined as a "discriminatory act that adversely affects the 'terms, conditions, or benefits' of employment." *Stoyanov v. Mabus*, 126 F. Supp. 3d 531, 542 (D. Md. 2015) (quoting *James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 375 (4th Cir. 2004)). It typically includes "'discharge, demotion, decrease in pay or benefits, loss of job title or supervisory responsibility, or reduced opportunities for promotion.'" *Id.* (quoting *Boone v. Goldin*, 178 F.3d 253, 255 (4th Cir. 1999)). Pursuant to the evidence in the record here, the actions of which Ms. Collins complains did not constitute cognizable adverse employment actions.

Despite that Ms. Collins failed to established a prima facie case of employment discrimination, Catholic Charities produced evidence of a non-discriminatory reason for her termination, i.e., that she was terminated for inadequate performance. To survive summary judgment, then, Ms. Collins had to offer sufficient evidence to establish that this reason was pretextual and that she was discharged due to her age and gender. *Nerenberg v. RICA*, 131 Md. App. 646, 662, *cert. denied*, 360 Md. 275 (2000).

In *Nerenberg*, this Court stated that a plaintiff can "show that the employer's stated legitimate and non-discriminatory reasons for termination are pretext for discrimination by proving 'both that the reason was false, and that discrimination was the real reason for the challenged conduct.'" *Id.* at 674-75 (quoting *Jiminez v. Mary Washington College*, 57 F.3d 369, 377 (4th Cir. 1995). Judge Thieme explained for this Court:

> 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." *Fuentes v. Perskie*, 32 F.3d 759, 765 (3rd Cir. 1994). . . . [I]f the plaintiff presents no evidence to assail the honesty of the employer's belief that its reasons are correct, the court cannot find those reasons to be discriminatory, even if it disagrees with the soundness of the employer's decision based on those reasons. *See Giannopoulos v. Brach & Brock Confections, Inc.*, 109 F.3d 406, 411 (7th Cir. 1997) ("it is not our province to decide whether that reason was wise, fair, or even correct, ultimately, so long as it truly was the reason for the plaintiff's termination"). A court "does not sit as a kind of super-personnel department weighing the prudence of employment decisions made by firms charged with employment discrimination." *Id.*; *see also Jiminez,* 57 F.3d at 377 (discrimination statutes are not "vehicles for substituting the judgment of a court for that of the employer").

Id. at 675.

Here, Ms. Collins did not create a genuine dispute that Catholic Charities' basis for termination was pretextual. As indicated, Ms. Collins did not present sufficient evidence to permit a reasonable factfinder to conclude that the reason asserted for termination, deficient performance, was false. *See Evans*, 80 F.3d at 960 ("Job performance and relative employee qualifications are widely recognized as valid, non-discriminatory bases for any adverse employment decision."). Accordingly, the circuit court properly granted summary judgment on the claim of disparate treatment.[18]

II.

Retaliation

Ms. Collins next argues that the court erred in granting summary judgment against her with respect to the claim for retaliation. In support, she asserts that she engaged in

[18] We note that, to avoid summary judgment, Ms. Collins needed to adduce sufficient evidence both that the proffered, nondiscriminatory reason for termination was false *and* that age and gender discrimination was the "real reason" for her termination. *See Nerenberg v. RICA*, 131 Md. App. 646, 680 (citing *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 524 (1993)), *cert. denied*, 360 Md. 275 (2000). Our conclusion that Ms. Collins did not adduce sufficient evidence that the proffered nondiscriminatory reason for termination was false ends our inquiry. We do note, however, that she also failed to show that the real reason for the termination was age or gender discrimination. As previously discussed, the three comments by Mr. Fuje, although unfortunate, did not show that her termination was motivated by discrimination.

protected activity by reporting to Mr. Vasquez that Mr. Fuje treated her differently from Mr. Kanowitz, and she suffered adverse action, including termination, as a result.[19]

Catholic Charities contends that Ms. Collins failed to establish a prima facie case of retaliation because "[a]ppellant's interaction with Mr. Vasquez, even if it occurred as she alleges, fell woefully short" of protected activity. It argues that Ms. Collins' complaint that Mr. Fuje treated her "differently" from Mr. Kanowitz did not put Catholic Charities on notice of unlawful discrimination. It asserts:

> Appellant simply provided no evidence that the decision to terminate her employment was causally connected to any involvement in protected activity. In fact, the undisputed facts demonstrated that the decision to terminate [a]ppellant was based upon legitimate non-retaliatory reasons having nothing at all to do with her involvement in any protected activity. Causation could not be established for a *prima facie* case of retaliation rendering [a]ppellant's claim properly dismissed as a matter of law.

In *Lockheed Martin Corp. v. Balderrama*, 227 Md. App. 476, 504 (2016), this Court set forth the proper analysis for a claim of retaliation when the employee does not have direct evidence of an intent to discriminate. As indicated, under the burden-shifting framework set forth in *McDonnell Douglas*, "the first step is for the employee to establish a *prima facie* case of discrimination":

> "To establish a *prima facie* case of discrimination based on retaliation, a plaintiff must produce evidence that she [(1)] engaged in a protected activity; [(2)] her employer took an adverse action against her; and [(3)] her employer's adverse action was causally connected to her protected activity." If the plaintiff meets his or her burden of production in this regard, "the burden of production then shifts to the defendant to offer a non-retaliatory reason for the adverse employment action." *Id.* at 199-200. If the employer meets this burden, "the burden of production shifts back to the plaintiff to

[19] She notes that, on December 18, 2012, she was reprimanded, on January 1, 2013, Mr. Fuje issued a Memorandum of Direction, and on April 4, 2013, she was terminated.

> show that the proffered reasons for the employment action were a mere pretext." *Id.* at 200. An employee shows pretext by proving "both that the reason was false and that discrimination was the real reason for the challenged conduct." *Nerenberg v. RICA of S. Md.*, 131 Md. App. 646, 675 (2000).

Id. (citation and quotations omitted). The test for determining retaliatory discharge claims is whether protected conduct was a "motivating factor" in the discharge. *Ruffin Hotel Corp. of Maryland v. Gasper*, 418 Md. 594, 610 (2011) (citing *Magee v. DanSources Tech. Servs.*, 137 Md. App. 527, 565-66 (2001).

In *Balderrama*, 227 Md. App. at 507, this Court made clear that "[n]ot every complaint about discrimination or unfairness" will qualify as protected activity in the context of an employment retaliation claim. We explained:

> A vague complaint alleging mere prejudice or general unfairness is insufficient; it must allege discrimination connected to a protected class. *See Daniels v. Sch. Dist. of Philadelphia*, 776 F.3d 181, 193 (3d Cir. 2015) ("The complaint must allege that the opposition was to discrimination based on a protected category, such as age or race.");[20] *Slagle v. County of Clarion*, 435 F.3d 262, 268 (3d Cir.) (employee's "vague allegations of 'civil rights' violations" were insufficient to meet the "low bar" of demonstrating participation in protected conduct), *cert. denied*, 547 U.S. 1207 (2006); *Tomanovich v. City of Indianapolis*, 457 F.3d 656, 663 (7th Cir. 2006) ("[T]he complaint must indicate the discrimination occurred because of sex, race, national origin, or some other protected class. . . . Merely complaining in general terms of discrimination or harassment, without indicating a connection to a protected class or providing facts sufficient to create that inference, is insufficient."); *Booker v. Brown & Williamson Tobacco Co.*, 879 F.2d 1304, 1313 (6th Cir. 1989) ("[A] vague charge of discrimination in an internal letter or memorandum is insufficient to constitute opposition to an unlawful employment practice.").

[20] In *Taylor v. Giant of Maryland, LLC*, 423 Md. 628, 652 (2011), the Court of Appeals recognized Maryland's "history of consulting federal precedent" in employment discrimination cases.

Here, Ms. Collins' complaint to Mr. Vasquez that Mr. Fuje was treating her "differently" from Mr. Kanowitz did not "allege discrimination connected to a protected class." *Balderrama*, 227 Md. App. at 507. Indeed, Mr. Vasquez, who did not recall Ms. Collins approaching him to discuss allegations or concerns of discriminatory treatment, testified that, if any employee indicated that he or she was being subjected to harassment, he immediately would have contacted Human Resources to begin an investigation. He testified that he did not learn about Ms. Collins' claim for discrimination until she filed her EEOC claim in April 2013. Because Ms. Collins' statement to Mr. Vasquez constituted nothing more than a vague complaint, without indicating discrimination connected to a protected class, it did not constitute protected activity. Accordingly, there was no dispute of material fact with respect to the claim of retaliation in response to protected activity.

III.

Hostile Work Environment

Ms. Collins next asserts that she established a claim for a hostile work environment based on her age and sex.[21] In support, she cites the inappropriate comments made by

[21] In her Corrected Brief, Ms. Collins states in her Question Presented that she was subjected to a hostile work environment based on her "age, sex, national origin, and race," and included reference to that claim in the argument section of her brief. Nevertheless, the substance of her argument addresses a hostile work environment in the context of her "age and sex." Accordingly, that is the issue we will address.

Mr. Fuje regarding her age and sex, as well as various work conditions that she contends constituted harassment.[22]

Catholic Charities contends that the court properly granted summary judgment on the hostile environment claim because Ms. Collins failed to offer sufficient evidence to create a genuine dispute of material fact as to whether she was subject to behavior, based on her sex and age, that interfered with her ability to work or that was hostile. It asserts that the only evidence offered in this regard was "unsubstantiated allegations of three alleged comments occurring over the span of several months," which occurred "only after

[22] In this regard, Ms. Collins asserts:

> [Mr.] Fuje harassed [Ms.] Collins and demanded she be on call when she was on vacation and on sick leave; repeatedly denied her requests for assistance and the support of a Program Coordinator and replacement administrative assistant; required [Ms.] Collins to take over her former administrative assistant's duties and reprimanded her for failing to complete all the assistant's duties; later promoted [Mr.] Kanowitz, who [Ms.] Collins had written up for time and attendance issues, to the Program Coordinator position without telling Ms. Collins or seeking her input, (continued . . .) (. . . continued) even though [Mr. Kanowitz] was supposed to report to [Ms.] Collins; refused to give [Ms.] Collins [Mr.] Kanowitz's position description; told staff not to report to her and to report directly to [Mr. Fuje] or [Mr.] Kanowitz; took away her office spaces at two of her facilities leaving her with an office at only one facility, which hindered her performance of her duties, and gave her office spaces to her subordinates, giving [Mr.] Kanowitz two office spaces; permitted [Mr.] Kanowitz to report directly to [Mr. Fuje]; prevented [Ms.] Collins from disciplining [Mr.] Kanowitz and blamed her for his performance deficiencies; told [Mr.] Kanowitz he did not have to abide by deadlines [Ms.] Collins gave him; encouraged residents to make complaints about [Ms.] Collins; disciplined her for abiding by [Catholic Charities'] official policies and for her staff's errors; changed her work hours so she had to work as late as 9 to 10 p.m. three days a week; stopped communicating with [Ms.] Collins after February 2013; and terminated her in April 2013 based on false assertions of performance deficiencies.

she injected herself into private conversations." Catholic Charities asserts that these comments did not constitute severe or pervasive acts, noting that appellant's counsel below did not argue that they interfered with her work performance, which he characterized as "stellar," and Ms. Collins testified that she did not believe it was necessary to report the comments to Human Resources. Catholic Charities contends that Ms. Collins did not show a workplace permeated with discriminatory action, but rather, she argues instead that "every managerial decision with which she did not agree was evidence of age-based harassment." It asserts that conjecture and speculation is not sufficient to defeat a motion for summary judgment.

A hostile environment exists "[w]hen the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Sys., Inc.,* 510 U.S. 17, 21 (1993) (citations and quotations omitted). To prevail on a claim that a workplace is hostile, "a plaintiff must show that there is (1) unwelcome conduct; (2) that is based on the plaintiff's sex [, age, race, or national origin]; (3) which is sufficiently severe or pervasive to alter the plaintiff's conditions of employment and to create an abusive work environment; and (4) which is imputable to the employer." *Okoli v. City of Balt.*, 648 F.3d 216, 220 (4th Cir. 2011) (citations and quotations omitted). Whether the environment is objectively hostile or abusive is "judged from the perspective of a reasonable person in the plaintiff's position." *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998). That determination is made "by looking at all the circumstances," which "may include the frequency of the

discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris*, 510 U.S. at 23.

Here, Ms. Collins did not present evidence that she was subjected to hostile behavior based on her sex or age. The three alleged comments by Mr. Fuje fail to show harassing conduct so "severe and pervasive" to satisfy the high standard to show a hostile workplace. *See Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998) (The requirement that conduct be "severe and pervasive" was designed to "filter out complaints attacking 'the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing.'") (quoting B. LINDEMANN & D. KADUE, SEXUAL HARASSMENT IN EMPLOYMENT LAW 175 (1992)). *Accord Al-Zubaidy v. TEK Indus., Inc.*, 406 F.3d 1030, 1038 (8th Cir. 2005) (Standards for proving a hostile workplace are demanding, and "'conduct must be extreme to amount to a change in the terms and conditions of employment.'") (quoting *Faragher*, 524 U.S. at 788). And the other actions relied on, in light of the entire record, do not support a claim of harassment, as opposed to general business management decisions. *Cole v. Board of Trustees of Northern Illinois Univ.*, ___ F.3d ___, No. 15-2305, 2016 WL 5394654, at *5 (7th Cir. 2016) (There must be some connection between action and the plaintiff's protected class because "not every perceived unfairness in the workplace may be ascribed to discriminatory motivation merely

because the complaining employee belongs to a [protected class].") (quoting *Zayas v. Rockford Mem'l Hosp.*, 740 F.3d 1154, 1159 (7th Cir. 2014)).[23]

Ms. Collins failed to offer sufficient evidence of discrimination to take the case to a jury. The circuit court properly granted Catholic Charities' motion for summary judgment.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[23] For example, there was not sufficient evidence to support a finding that Mr. Fuje's action in determining that Ms. Collins did not need three separate offices, but instead, would have one office for herself and share the other two offices with another employee, was a discriminatory action as opposed to a reasonable business decision.