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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1427-21**

TEQUILA THOMPSON,

Plaintiff-Appellant,

v.

NEW JERSEY DEPARTMENT OF  
CORRECTIONS, GARY LANIGAN,  
Commissioner, in his official capacity  
and individually, JONATHAN GRAMP,  
Administrator, in his official capacity  
and individually, MAJOR DANIEL  
GERDES, in his official capacity and  
individually, MAJOR RYAN  
GIANNASCOLI, in his official capacity  
and individually, and LIEUTENANT  
CYNTHIA BRADLEY, in her official  
capacity and individually,

Defendants-Respondents.

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Argued on June 6, 2023 – Decided September 7, 2023

Before Judges Sumners and Geiger.

On appeal from the Superior Court of New Jersey, Law  
Division, Burlington County, Docket No. L-0858-18.

Luretha M. Stribling argued the cause for appellant.

Jemi G. Lucey argued the cause for respondents New Jersey Department of Corrections, Commissioner Gary Lanigan, Administrator Jonathan Gramp, Major Daniel Gerdes, and Major Ryan Giannascoli (Greenbaum, Rowe, Smith & Davis LLP, attorneys; Jemi G. Lucey and Maja M. Obradovic, of counsel and on the brief; Joel Clymer, on the brief).

Walter F. Kawalec, III, argued the cause for respondent Lieutenant Cynthia Bradley (Marshall Dennehey Warner Coleman & Goggin, attorneys; Walter F. Kawalec, III, and Leonard C. Leicht, on the brief).

#### PER CURIAM

Plaintiff Tequila Thompson appeals from two summary judgment orders dismissing her New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50, claims against all defendants. After carefully reviewing the record in light of the applicable legal principles and the parties' arguments, we affirm.

#### I

We need only briefly summarize the pertinent facts—viewing them "in the light most favorable to [plaintiff,] the non-moving party," Globe Motor Co. v. Igdaley, 225 N.J. 469, 479 (2016) (citing R. 4:46-2(c))—and procedural history, which are thoroughly recounted in the trial court's comprehensive thirty-six-page written opinion.

Plaintiff, a Black woman, worked as a Department of Corrections (DOC) Sergeant at the Albert C. Wagner Youth Correctional Facility from January 2011 until her reassignment to a new institution upon Wagner's closing in 2020. During this time, defendants, Administrator Jonathan Gramp, Major Daniel Gerdes, and Major Ryan Giannascoli, all white men, oversaw Wagner's administration and operation. Lieutenant Cynthia Bradley, a Black woman, was a rank higher than plaintiff but not her direct supervisor.

As a disciplinary Sergeant, plaintiff was responsible for "oversee[ing] the disciplinary process [including] . . . serving and investigating all disciplinary charges." She was also responsible for the inmate urinalysis program. Additionally, she "may be assigned to other or additional duties as determined by the Shift Commander. . . . [and] will assume all duties and responsibilities of any additionally assigned post or task."

On April 25, 2018, plaintiff filed her complaint against defendants alleging numerous specific instances of race and gender discrimination, racial and sexual harassment through the creation of a hostile work environment, and retaliation due to protected conduct, all of which were aided and abetted by the individual defendants.

Occurring between 2012 and 2017, plaintiff's allegations include: (1) her disciplinary actions against her subordinates not being treated seriously, especially compared to those of white supervisors; (2) disciplinary action taken against her for unfounded claims involving workplace violence and a 2017 letter of counseling (LOC) for failure to adequately perform her duties; (3) receiving new duties, including the inmate urinalysis program and inmate paralegal support, and frequent assignment to mess hall duty; (4) her two Equal Employment Division (Division) complaints filed in 2013 and 2016 and one Equal Employment Opportunity Commission (EEOC) complaint filed in 2015, which were mishandled and inappropriately dismissed by the Division; (5) having her workstation transferred to a grossly inadequate area of Wagner; and (6) an overall racist and sexist workplace, including instances of racial slurs and offensive language being used against her and others.

At the completion of discovery, defendants moved for summary judgment. Prior to argument, the trial court issued a tentative written decision explaining its reasoning for granting summary judgment. At argument, the court began with—and spent the majority of time—hearing plaintiff's position. The court then issued a final written decision and two orders granting summary judgment, one for Bradley and one for the other defendants.

The trial court determined plaintiff's allegations prior to April 25, 2016, when the complaint was filed, were untimely because there is a two-year statute of limitations for LAD claims. The court then dismissed defendants' timely discrimination and harassment claims because: (1) they were unsubstantiated and only supported by bare, self-serving assertions; (2) they did not involve disciplinary action and, as such, were not adverse employment actions; (3) any disciplinary action complied with DOC's disciplinary code; (4) there was no evidence of race or sex-based animus behind the allegations; (5) the action was based on a legitimate business reason; and (6) she failed to prove the allegation occurred within the statute of limitations.

Regarding the claims against Bradley, the court noted plaintiff admitted Bradley was not her supervisor and, in turn, she cannot "show that the employer delegated to Bradley the authority to control the situation leading to . . . [p]laintiff's complaint."

Given her timely claims were unsustainable, the court found plaintiff could not establish a continuing violation. Moreover, even if all her allegations were considered together, the court determined the alleged wrongful conduct was discrete, rather than continuous or synergistic discrimination, "they are not

of the same or similar nature," and they were based on speculation without evidence linking them.

The court held plaintiff failed to establish any causal link existed between her EEOC complaint and the alleged wrongful conduct, instead attempting to impermissibly include the time-barred allegations through the retaliation claims. The court noted "[t]he mere fact that an adverse employment action happens after the protected activity will ordinarily be insufficient to satisfy [p]laintiff's burden to demonstrate a causal link."

Finally, the court held plaintiff did not provide evidence to suggest Gramp, Gerdes, Giannascoli, or Bradley aided and abetted each other in performing any wrongful conduct.

## II

Plaintiff raises the following contentions for our consideration:

### POINT I

THE TRIAL COURT FAILED TO ADHERE TO THE REQUIREMENTS OF THE SUMMARY JUDGMENT STANDARD AND IMPROPERLY GRANTED SUMMARY JUDGMENT FOR THE DEFENDANTS.

### POINT II

THE COURT ENGAGED IN IMPERMISSIBLE WEIGHING OF THE EVIDENCE RATHER THAN DETERMINING IF THE DOCUMENTARY,

EVIDENTIARY MATERIAL SUPPORTED MATERIAL ISSUES IN DISPUTE AND THE ACTIONS OF THE TRIAL COURT REPRESENTED AN ABUSE OF DISCRETION.

POINT III

THE TRIAL COURT MIS-STATED THE LAW IN THIS CASE AND ISSUED RULINGS WHICH WERE BASED ON THIS FAULTY INTERPRETATION AND RECITATION OF THE LAW. THE APPELLATE COURT IS NOT REQUIRED TO ADOPT THE TRIAL COURTS' INTERPRETATION OF THE LAW.

POINT IV

THE TRIAL COURT CONDUCTED THE SUMMARY JUDGMENT PROCEEDINGS WITH AN APPEARANCE OF BIAS WHEREIN THE DEFENDANTS WERE FAVORED.

We conduct a de novo review of an order granting a summary judgment motion, Gilbert v. Stewart, 247 N.J. 421, 442 (2021), applying "the same standard as the trial court," State v. Perini Corp., 221 N.J. 412, 425 (2015). Summary judgment is proper if the record demonstrates "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment . . . as a matter of law." Burnett v. Gloucester Cnty. Bd. of Chosen Freeholders, 409 N.J. Super. 219, 228 (App. Div. 2009) (quoting R. 4:46-2(c)).

To determine whether there are genuine issues of material fact, we consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). "An issue of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Grande v. St. Clare's Health Sys., 230 N.J. 1, 24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)).

Factual issues of an unsubstantial nature are insufficient to preclude the granting of summary judgment. See Brill, 142 N.J. at 540. Brill instructs that if the evidence in the record "is so one-sided that one party must prevail as a matter of law, . . . the trial court should not hesitate to grant summary judgment." Ibid. (citation and internal quotations marks omitted).

### III

Preliminarily, we address plaintiff's arguments that the trial court erred and demonstrated bias by: (1) having her, the non-moving party, argue first,



contrary to summary judgment procedure; (2) not granting any favorable inferences to her, instead "challenging and negating [her] arguments"; and (3) impermissibly discounting the "documentary, evidentiary material" and weighing the evidence, such as finding Lieutenant Cynthia Camp's affidavit "is, at the very least, hearsay, without first-hand knowledge or supporting evidence."<sup>1</sup> These arguments are meritless.

There is no court rule which indicates any order of argument for parties at a summary judgment proceeding and "[j]udges are accorded wide discretion in exercising control over their courtrooms and trial proceedings." Martin v. Newark Pub. Schs., 461 N.J. Super. 330, 340 (App. Div. 2019) (citations and internal quotations marks omitted). As a result, we see no problem with the court starting argument with plaintiff and focusing a majority of time on her opposition to summary judgment, especially considering the court released a tentative decision that defendants were entitled to summary judgment. See ibid. Furthermore, plaintiff fails to show how the court improperly weighed the

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<sup>1</sup> Camp's affidavit recounted a specific instance of Gerdes using inappropriate language toward her and alleged he directed her subordinates not to report certain events to her. The affidavit also corroborated plaintiff's claims that: she was subjected to systemic racism and sexism at Wagner; her subordinates would refuse to follow her orders because they knew there would be no repercussions; her subordinate's acted insubordinately; her being assigned mess hall duty; and her new workstation being "condemned."

evidence or inappropriately deemed Camp's affidavit as hearsay. See N.J.R.E. 801(c) and 802. All legitimate inferences were viewed favorably to plaintiff; she simply failed to provide sufficient evidence to support her claims, as discussed below. Lastly, we glean no evidence of bias in the record.

#### IV

##### A.

The principles governing LAD claims have been clearly stated by our Supreme Court and this court. The three-part McDonnell Douglas<sup>2</sup> analysis has been adopted "as the method for analyzing LAD claims." El-Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 166 (App. Div. 2005). That test provides:

(1) the plaintiff must come forward with sufficient evidence to constitute a prima facie case of discrimination; (2) the defendant then must show a legitimate non-discriminatory reason for its decision; and (3) the plaintiff must then be given the opportunity to show that [the] defendant's stated reason was merely a pretext or discriminatory in its application.

[Ibid. (citing Dixon v. Rutgers, 110 N.J. 432, 442 (1988)).]

To make a prima facie case of race or gender discrimination, it must be shown: (1) she is a member of a protected class; (2) she was qualified and

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<sup>2</sup> McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

performing the essential functions of the job; (3) she was subjected to an adverse employment action; and (4) her employer thereafter sought similarly qualified individuals for that job. Victor v. State, 203 N.J. 383, 409 (2010) (citing Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 596–97 (1988)).

To prove a hostile work environment based on racial or sexual harassment under the LAD, a plaintiff must show:

[T]he complained-of conduct (1) would not have occurred but for the employee's gender [or race]; and it was (2) severe or pervasive enough to make a (3) reasonable [person] believe that (4) the conditions of employment are altered and the working environment is hostile or abusive. . . . When the harassing conduct is sexual or [racist] in nature . . . the first element will automatically be satisfied. . . . However, a LAD plaintiff is also compelled to prove that the harassing conduct, not its effect on the plaintiff or on the work environment, was severe or pervasive. . . . To satisfy the third and fourth factors, a LAD plaintiff must show that [their] working conditions were affected by the harassment to the point at which a reasonable [person] would consider the working environment hostile.

[Griffin v. City of E. Orange, 225 N.J. 400, 413-14 (2016) (citations and internal quotations marks omitted).]

There is a two-year statute of limitations on LAD claims. Montells v. Haynes, 133 N.J. 282, 292 (1993). "For causes of action arising under anti-discrimination laws, however, a judicially created doctrine known as the

continuing violation theory has developed as an equitable exception to the statute of limitations." Bolinger v. Bell Atl., 330 N.J. Super 300, 306 (App. Div. 2000). When a "continual, cumulative pattern of tortious conduct [exists], the statute of limitations does not begin to run until the wrongful action ceases." Wilson v. Wal-Mart Stores, 158 N.J. 263, 272 (1999). To establish a continuing violation based on a series of discriminatory acts, the court:

must consider two questions. First, ha[s] plaintiff[] alleged one or more discrete acts of discriminatory conduct by defendants? If yes, then their cause of action would have accrued on the day on which those individual acts occurred. Second, ha[s] plaintiff[] alleged a pattern or series of acts, any one of which may not be actionable as a discrete act, but when viewed cumulatively constitute a hostile work environment? If yes, then their cause of action would have accrued on the date on which the last act occurred, notwithstanding "that some of the component acts of the hostile work environment [have fallen] outside the statutory period."

[Shepherd v. Hunterdon Developmental Ctr., 174 N.J. 1, 21 (2002) (alteration in original) (quoting AMTRAK v. Morgan, 536 U.S. 101, 116 (2002)).]

## B.

Plaintiff asserts the evidence she presented established prima facie LAD claims because she was a member of a protected class, performing her job satisfactorily, and facing adverse actions based on her race and gender for no legitimate reasons. She claims the court incorrectly used the elements that

would satisfy the standard for a hostile work environment as the elements to establish discrimination.

Plaintiff alleges the harassment against her was ongoing and continuing, so the continuous violation doctrine applies and requires all her allegations to be considered. She cites the deposition testimony of her physician and therapist as evidence the discrimination and harassment she faced at work was so continuous and damaging that she sought mental health treatment and was diagnosed with anxiety, depression, panic attacks, and post-traumatic stress disorder.

Plaintiff argues her allegations evince discrete and non-discrete retaliatory conduct that led to continuous, adverse acts because of her protected conduct—namely, her EEOC complaint. Plaintiff contends the trial court simply tried to "explain the conditions away" and improperly found some of the conduct in 2017 to be lacking a sufficient causal link to the EEOC complaint, when all the incidents should have been seen as a "continuous stream of adverse conditions."

Plaintiff claims Gramp, Gerdes, and Giannascoli used their supervisory roles to "engage[] in coordinated actions" to discriminate against and harass her, using Bradley—because she is Black like her—to shield their actions from discriminatory intent. According to plaintiff, the court explained away the

record, minimized the facts pled, and failed to apply the law, resulting in an incorrect ruling.

We agree with plaintiff that the trial court conflated the requirements to prove a prima facie case for racial discrimination with those needed to establish a prima facie case for hostile work environment under Cutler v. Dorn, 196 N.J. 419, 430 (2008). Nevertheless, summary judgment is appropriate under the applicable law. See Hayes v. Delamotte, 231 N.J. 373, 387 (2018) (applying the well-settled principle that appeals are taken from orders and not opinions, and that orders may be affirmed for reasons different from those set forth by the trial court).

All of plaintiff's discrimination and harassment claims made within two years of her April 25, 2018 complaint were either unsubstantiated, not adverse employment actions, or were based on legitimate business reasons.

First, plaintiff's reports of insubordinate acts were not ignored. To the contrary, plaintiff's subordinate received an official written reprimand and was relieved of her duties for failing to perform them.

Second, plaintiff's unsubstantiated workplace violence claim does not support a prima facie discrimination case because there was no adverse employment action. She experienced no disciplinary consequences or loss of

pay. See Victor, 203 N.J. at 409. In fact, she was not suspended from work during the investigation, as required by the workplace violence policy, and instead was transferred to a different building.

Third, there is no evidence: (1) the 2017 LOC for failure to adequately perform duties was motivated by plaintiff's race or sex; (2) her treatment was discriminatory; or (3) the LOC was pretextual. The LOC was supported by a thirty-page investigation report pertaining to the incident and, more importantly, was not a formal disciplinary action but merely a warning.

Fourth, both Gramp and Giannascoli stated plaintiff's workplace transfer was to address safety concerns, specifically the security protecting plaintiff. Plaintiff offers no evidence to refute their statements or to link the move to her race or sex aside from self-serving assertions and Camp's hearsay affidavit. See Puder v. Buechel, 183 N.J. 428, 440-41 (2005) ("Although we are mindful that, when reviewing summary judgment motions, we must view the 'evidential materials . . . in the light most favorable to the non-moving party,' . . . conclusory and self-serving assertions by one of the parties are insufficient to overcome the motion" (quoting Brill, 142 N.J. at 540)).

Fifth, plaintiff's new duty assignments were not proof of discriminatory conduct. Although she was directed to be involved with the inmate urinalysis

program in 2017, the record indicates this was always part of her job description. As for supporting inmate paralegals, plaintiff consented to the responsibility, signing a form indicating "[i]t is the [d]isciplinary [s]ergeants['] responsibility to ensure" paralegals are escorted to the inmates. Giannascoli also testified that ensuring paralegals attended court line proceedings was always part of plaintiff's job description. There is no evidence the revised method for escorting paralegals was related to plaintiff's race or sex, as it was seemingly in response to a request from the Supervisor of Education.

Sixth, plaintiff provides no evidence she was assigned to work in the inmate mess hall based on her race or sex. Moreover, evidence reflects the assignment began because a DOC restructuring removed the sergeant who had the duty before and, as such, she and other officers were sporadically given this assignment. Furthermore, plaintiff admitted other responsibilities could be given to her at the discretion of her supervisors; she was unaware of other sergeants being pulled for the position, and it was "not bad" to be pulled from her post. Thus, the allegation did not equate to severe and pervasive harassment. Further, there was a legitimate business decision behind the assignment, and there is no evidence it was pretextual. Simply put, plaintiff's claims were bald assertions. See Puder, 183 N.J. 440-41.



C.

Given our conclusion that plaintiff's claims occurring within two years of the filing of her complaint are meritless, it is unnecessary to consider whether her undated claims or those occurring beyond the two-year LAD statutory period survive under the continuing violation doctrine. See Montells, 133 N.J. at 292; see also Shepherd, 174 N.J. at 21; Wilson, 158 N.J. at 272.

Nonetheless, there is no evidence any of plaintiff's allegations were in retaliation to her 2015 EEOC complaint. Under N.J.S.A. 10:5-12(d), it is unlawful to "take reprisals against any person because that person has opposed any practices or acts forbidden under the [LAD]."

In order to establish a prima facie claim for retaliation under the LAD, plaintiff must demonstrate: (1) that she engaged in protected activity; (2) the activity was known to the employer; (3) plaintiff suffered an adverse employment decision; and (4) there existed a causal link between the protected activity and the adverse employment action.

[Young v. Hobart W. Grp., 385 N.J. Super. 448, 465 (App. Div. 2005) (citing Craig v. Suburban Cablevision, 140 N.J. 623, 629-30 (1995)).]

A defendant must then "articulate a legitimate, non-retaliatory reason for the decision." Ibid. (quoting Romano v. Brown & Williamson Tobacco Corp., 284 N.J. Super. 543, 549 (App. Div. 1995)). "Next, 'the plaintiff must come

forward with evidence of a discriminatory motive of the employer, and demonstrate that the legitimate reason was merely a pretext for the underlying discriminatory motive.'" Ibid. (quoting Romano, 284 N.J. Super. at 549).

The record does not demonstrate plaintiff has faced any adverse employment action after 2015, and thus her discrimination claims are meritless. Her sole evidence is that some of her allegations occurred after the EEOC complaint. However, temporal proximity is not sufficient to prove a retaliation claim without facts "unusually suggestive of retaliatory motive," which do not exist here. See Young, 385 N.J. Super. at 467 (citation omitted).

#### D.

Plaintiff's aiding and abetting claims against defendants can only be successful if the underlying claims had merit. See Cicchetti v. Morris Cnty. Sheriff's Off., 194 N.J. 563, 594 (2008); N.J.S.A. 10:5-12(e). Individual liability exists for "any person, whether an employer or an employee or not, to aid, abet . . . the doing of the acts forbidden under this act, or to attempt to do so." N.J.S.A. 10:5-12(e). A plaintiff must demonstrate:

- (1) the party whom the defendant aids must perform a wrongful act that causes an injury;
- (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; [and]
- (3) the defendant must knowingly and substantially assist the principal violation.

[Tarr v. Ciasulli, 181 N.J. 70, 84 (2004) (quoting Hurley v. Atl. City Police Dep't, 174 F.3d 95, 127 (3d Cir. 1999)).]

As discussed previously, plaintiff's discrimination and harassment claims are either untimely or unsubstantiated and, therefore, her aiding and abetting claims must necessarily fail.

To the extent we have not addressed any arguments raised by plaintiff, they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION