UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: August 08, 2017

Mr. Joshua Adam Engel
Engel and Martin
5181 Natorp Boulevard
Suite 210
Mason, OH 45040

Re: Case No. 16-3681, *Terra Hooks v. Rumpke Transportation Co., et al*
Originating Case No. : 1:15-cv-00135

Dear Counsel,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Roy G. Ford
Case Manager
Direct Dial No. 513-564-7016

cc: Mr. Joseph Corey Asay
Ms. Colleen P. Lewis
Mr. Richard W. Nagel

Enclosure

Mandate to issue

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 16-3681

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TERRA A. HOOKS, Plaintiff-Appellant, v. RUMPKE TRANSPORTATION COMPANY, LLC; WILLIAM GOINS, Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

O R D E R

Before: COLE, Chief Judge; BOGGS and MOORE, Circuit Judges.

Terra A. Hooks, an Ohio resident represented by counsel, appeals from the district court's order granting the defendants' motion for summary judgment in her Title VII employment-retaliation suit. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

I. Background

The following facts are cast in the light most favorable to Hooks, as the nonmoving party below. *See EEOC v. Ford Motor Co.*, 782 F.3d 753, 760 (6th Cir. 2015) (en banc).

A. Hooks's Complaints

Hooks, an African-American woman, R. 1-1 (EEOC Charge at 1–2) (Page ID #9–10), worked as a dispatcher for Rumpke Transportation Company, LLC, a regional waste disposal and recycling center, from 2005 to January 2014. R. 17 (Hooks Dep. at 18, 50) (Page ID #56, 64); R. 23-1 (Hooks Decl. ¶ 1) (Page ID #306). Hooks claims that this entire dispute began in August 2012, when she reported an incident involving the foreman. R. 17 (Hooks Dep. at 127–

28) (Page ID #83). According to Hooks, the foreman, Doug Johnson, threatened her, "saying he was going to be all over [her] like a fat boy at a buffet." *Id.* at 127 (Page ID #83). Taken aback by this comment, Hooks reported it to human resources. Unfortunately, everything went downhill from there: "all of a sudden September I got written up. October I get written up. And it all stemmed from Doug Johnson, and me going to HR complaining that he threatened me." *Id.* at 127–28 (Page ID #83). Hooks speculated, "HR must have talked to Johnson and Goins about this and then that's when they started trying to get rid of me and coming up with trivial reasons, because, I mean, I work in a trucking company and saying it's a shame, I mean, all those guys—a shame is not even, you know, a bad word. And those guys say all kinds of stuff. Every day." *Id.* at 128 (Page ID #83).

These "trivial reasons" continued on December 19, 2013, when Hooks was suspended for three days by Goins. R. 23-1 (Hooks Decl. ¶ 2) (Page ID #306). Goins claimed that Hooks had failed to hang work orders on December 14, a responsibility that she shared with Jason Thompson, another dispatcher, who is white. *See* R. 17 (Hooks Dep. at 59, 240) (Page ID #66, 111); R. 19 (Goins Dep. at 111) (Page ID #225); R. 23-1 (Hooks Decl. ¶ 2) (Page ID #306). Hooks states that when she returned from suspension, five drivers told her that they had in fact received the work orders. R. 23-1 (Hooks Decl. ¶ 3) (Page ID #306); R. 23-1 (Work Orders) (Page ID #308–12). Although Hooks was not given an opportunity to contest her suspension when Goins levied it, R. 23-1 (Hooks Decl. ¶ 2) (Page ID #306), she met with Jeff Rumpke, the regional vice president, on the day of the suspension to tell him that she was being treated "unfairly," R. 17 (Hooks Dep. at 238–39) (Page ID #111). She told Rumpke that the suspension was unfounded because she had in fact hung the work orders and that, what is more, she was being scrutinized more than Thompson. *Id.* at 181–85 (Page ID #96–97). Hooks further told Rumpke that she "was going to do what [she] had to do to make [her] name right," later claiming that she intended to speak to the EEOC. *Id.* at 184 (Page ID #97). "[B]y the time [Hooks] left [Rumpke's] office, [she] was crying and Jeff was looking out the window like he wasn't even listening to [her]." *Id.* Hooks later raised the issue on December 27th with Beverly Essex, who worked in human resources, and requested a meeting to discuss the suspension with Goins, Scott

Sand (Goins's supervisor), and Rumpke. R. 17 (Hooks Dep. at 220–22) (Page ID #106–07). The meeting was never scheduled because of the holiday season. *Id.* at 220 (Page ID #106).

Hooks filed a race, sex, and age discrimination charge with the Equal Employment Opportunity Commission ("EEOC") at the turn of the year.[1] R. 1-1 (EEOC Charge) (Page ID #9–12). Hooks returned to work on January 2, 2014, clocking in before her shift started "because the weather was bad," pursuant to an informal policy that allowed her to arrive early in poor weather. R. 17 (Hooks Dep. at 209) (Page ID #103). She did the same on January 3, 6, and 7. *Id.* Although there was only limited precipitation after January 2, there was sufficient snow and ice on the roads from the previous snowfall and record-low temperatures that Hooks had difficulty driving to work. *See id.* at 210–17 (Page ID #104–05). Goins returned from vacation on January 6 and learned that Hooks had been clocking in early. R. 19 (Goins Dep. at 50) (Page ID #210).

At 9:38 a.m. on January 7, 2014, Hooks e-mailed Essex, notifying her that Hooks had "decided to let EEOC handle this matter." R. 17-16 (Jan. 7, 2014 9:38 a.m. Hooks E-mail to Essex) (Page ID #169). Essex responded at 9:59 a.m., asking "Okay, are you saying that you no longer want the meeting?" R. 17-16 (Jan. 7, 2014 9:59 a.m. Essex E-mail to Hooks) (Page ID #169). Following a couple of other e-mails, at 10:48 a.m., Essex e-mailed another Rumpke Transportation Company employee, cc'ing Jeff Rumpke, to say, "I have advised Jeff and Scott of the discrimination charge that was filed (race and age)…. Our meeting with Terra for Thursday has been cancelled." R. 17-16 (Jan. 7, 2014 10:48 a.m. Essex E-mail to Cabe) (Page ID #168).

That same day, and after Goins found out from his foremen that they had not given Hooks permission to come in early, Goins claims that he decided to recommend Hooks's termination. R. 19 (Goins Dep. at 51) (Page ID #210). Goins then met with Sand, and the two spoke on the phone with Essex about next steps, including a "possible termination." *Id.* at 51 (Page ID #210); R. 18 (Sand Dep. at 42–43) (Page ID #184). It was during this phone

[1] Hooks signed the charge on December 30, 2013, but a stamp indicates that the EEOC received the charge on January 2, 2014. R. 1-1 (EEOC Charge at 1, 4) (Page ID #9, 12).

conversation that Goins claims to have learned of Hooks's EEOC charge for the first time. R. 19 (Goins Dep. at 51–53) (Page ID #210). On January 8, 2014, Goins met with Rumpke, Sand, Essex, Charla Cabe (the head of human resources), and Jim Thaxton (counsel for Rumpke) to "review all of Ms. Hooks'[s] disciplinary actions." *Id.* at 43–44 (Page ID #208). The group decided to terminate Hooks, *id.*, and the next day, Goins and Sand met with Hooks to inform her that she was terminated. R. 17 (Hooks Dep. at 231) (Page ID #109).

B. Procedural History

In her complaint, Hooks alleged that she was suspended because she is an African-American woman, as evidenced by the better treatment of a white male colleague, and asserted that she was fired for filing a complaint with the EEOC. *See* R. 1 (Compl. ¶¶ 1, 10, 17, 26) (Page ID #1, 3–5). She sued Rumpke Transportation and Goins, alleging that she was discriminated against based on her race and gender and terminated in retaliation for filing a complaint with the EEOC, both in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e–2000e-17 (2012), and Ohio Revised Code Chapter 4112, Ohio Rev. Code Ann. § 4112 (West 2007). R. 1 (Compl. ¶¶ 28–35) (Page ID #5–6). She sought back pay and benefits, reinstatement, front pay, compensatory damages, and punitive damages. *Id.* ¶¶ a–f (Page ID #6–7).

The defendants moved for summary judgment, arguing that Hooks could not establish disparate treatment or a causal link between the disciplinary action and her race, gender, or the EEOC charge. R. 21 (Defs.' Mot. Summ. J.) (Page ID #260–61). Instead, they identified Hooks's early arrivals as a nondiscriminatory, nonretaliatory basis for her termination. R. 21-1 (Defs.' Mem. in Support of Mot. Summ. J. at 1) (Page ID #266). In her response, Hooks argued that even if this was a nondiscriminatory, nonretaliatory basis, there was evidence of pretext. *See* R. 23 (Pl.'s Resp. 1 Defs.' Mot. Summ. J. at 5–12) (Page ID #297–304). The district court awarded summary judgment against Hooks, finding that (1) the record did not support a finding that Hooks's suspension was discriminatory and (2) Goins had decided to terminate Hooks before he learned of her EEOC charge, precluding any charge of retaliation. *See Hooks v. Rumpke Transp. Co.*, No. 1:15-CV-135, 2016 WL 3058009, at *1 (S.D. Ohio May 31, 2016).

Likewise, the court held that Hooks could not show that the defendants' proffered reason for termination was mere pretext. *Id.* at *2. This appeal follows.

II. Analysis

A. Standard of Review

We review a district court's grant of summary judgment de novo. *See Ford Motor Co.*, 782 F.3d at 760. Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

B. Prima Facie Case

As an initial matter, Hooks limits her appellate arguments to her retaliation claim and therefore waives review of her discrimination claims. *See Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 311 (6th Cir. 2005).

Title VII retaliation claims have three steps. First, the plaintiff must establish a prima facie case of retaliation. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). To make a prima facie case of retaliation, "the plaintiff must demonstrate by a preponderance of the evidence that: 1) he engaged in activity that Title VII protects; 2) defendant knew that he engaged in this protected activity; 3) the defendant subsequently took an employment action adverse to the plaintiff; and 4) a causal connection between the protected activity and the adverse employment action exists." *Abbott v. Crown Motor Co.*, 348 F.3d 537, 542 (6th Cir. 2003). The burden then shifts to the defendant, who must articulate a legitimate nonretaliatory reason for the adverse employment action. *Id.* If the defendant makes such a showing, the burden shifts back to the plaintiff, who must demonstrate that the defendant's reasons for the adverse action were mere pretext. *Id.*

Here, there is no dispute that Hooks's EEOC charge was protected activity or that her termination was an adverse employment action. Instead, the district court determined that there was "no causal connection between the filing of [Hooks's] EEOC [charge] in December 2013 and her termination a few weeks later in January 2014 because the record shows that Goins made the decision to initiate her termination before he became aware that Plaintiff had filed an EEOC

[charge]." In addition, the district court concluded that, even if Hooks could meet all four elements, the defendants' proffered reason for terminating her—clocking in early without prior permission—was legitimate and non-pretextual, entitling them to summary judgment.

On appeal, Hooks asserts that the decision to terminate her was not made until after Goins learned of her EEOC charge. She points to the January 8 meeting, which Goins testified was "to review all of Ms. Hooks'[s] disciplinary actions before we made the decision to terminate." R. 19 (Goins Dep. at 43) (Page ID #208). The defendants respond that Goins had already decided to recommend termination on January 7, before he learned about the EEOC charge when he spoke to Essex later that day. The January 8 meeting, Goins explained, was "to make sure that we were in compliance and that we weren't doing anything that was not by the book or anything that was unfair" and to obtain approval for his recommended course of action.

We have held that "[w]here an adverse employment action occurs very close in time after an employer learns of a protected activity, such temporal proximity between the events is significant enough to constitute evidence of a causal connection for the purposes of satisfying a prima facie case of retaliation." *Montell v. Diversified Clinical Servs., Inc.*, 757 F.3d 497, 505 (6th Cir. 2014) (internal quotation marks omitted), *cited in Amos v. McNairy Cty.*, 622 F. App'x 529, 537 (6th Cir. 2015) ("Even after [*University of Texas Southwestern Medical Center v.*] *Nassar*[, 133 S. Ct. 2517 (2013)], . . . this court has explicitly held that temporal proximity alone can establish causation."). Alternatively, "combining temporal proximity with other evidence of retaliatory conduct is enough to establish a causal connection" as well. *See Montell*, 757 F.3d at 506.

There are two categories of potential decisionmakers in this case: those who assert that they decided to terminate Hooks *before* they learned of her EEOC charge and those who decided *after*. Hooks has established a prima facie case against her employer based on the actions of all of the company officials, but for different reasons. First, Goins asserts that he decided to recommend Hooks's termination before learning of her EEOC charge. *See* R. 19 (Goins Dep. at 51) (Page ID #210). At first blush, this appears to defeat Hooks's prima facie case; "[e]mployers need not suspend previously planned transfers upon discovering that a Title VII suit has been

filed, and their proceeding along lines previously contemplated, though not yet definitively determined, is no evidence whatever of causality." *See Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 272 (2001). However, a reasonable jury could disbelieve Goins's self-serving statement that he learned of Hooks's EEOC charge after he decided to terminate her. Hooks reported the charge to Essex at 9:38 a.m. on the same day that Goins decided to terminate her. *See* R. 17-16 (Jan. 7, 2014 9:38 a.m. Hooks E-mail to Essex) (Page ID #169). Essex informed three employees of the charge, including Goins's supervisor, by 10:48 a.m. *See* R. 17-16 (Jan. 7, 2014 10:48 a.m. Essex E-mail to Cabe) (Page ID #169). Meanwhile, Goins spoke with four foremen that day before he decided to terminate Hooks. *See* R. 19 (Goins Dep. at 50) (Page ID #210). And Goins was busy at work because he had just returned from vacation, so a jury could infer that he had more pressing commitments than tracking down Hooks's work schedule. *See id.* Thus, even setting aside the self-serving nature of Goins's assertion that he coincidentally decided to terminate Hooks just before he learned of the charge, the amount of time it would take for him to investigate her schedule combined with his other work commitments could lead a reasonable jury to find that he in fact learned of the charge before deciding to terminate Hooks. Therefore, Hooks has established a prima facie case against Goins based on the hours that transpired between the time when he likely learned of her EEOC charge and his decision to terminate her. *See Montell*, 757 F.3d at 505.

Everyone else who was involved in Hooks's termination decided to terminate her after learning of her EEOC charge. Rumpke, Sand, Essex, and Cabe all learned of the EEOC charge at least before Sand's meeting with Goins, when Goins's termination suggestion first arose. *See* R. 17-16 (Jan. 7, 2014 10:48 a.m. Essex E-mail to Cabe) (Page ID #168). This temporal proximity between Sand's January 7 knowledge of the EEOC charge and Sand's January 8 decision, along with Goins, Essex, and Cabe, to terminate Hooks on January 9, is sufficient to establish a prima facie case against her employer. We have previously held that a temporal proximity of one month "allow[s] us to make an inference of causation," *see Herrera v. Churchill McGee, LLC*, 545 F. App'x 499, 502 (6th Cir. 2013); one to two days is certainly

sufficient. Therefore, with the facts cast in the light most favorable to Hooks, she has established a prima facie case against Goins and Rumpke Transportation Company, LLC. [2]

The appellees argue in response that they should not be required to abandon a plan to terminate an employee simply because that employee files an EEOC charge. In general terms, they are correct. *See Breeden*, 532 U.S. at 272. The problem is, a jury could find that there was no such plan in this case. As discussed above, a reasonable jury could disbelieve Goins's assertion that he coincidentally decided to terminate Hooks before he learned of her EEOC charge.[3] Moreover, Goins was not the only decisionmaker in Hooks's termination. That decision was made in a meeting with Goins, Sand, Essex, and Cabe one day after each of them learned of Hooks's EEOC charge. R. 19 (Goins Dep. at 43–46) (Page ID #208–09). Put simply, the appellees have not shown that these other decision makers were "proceeding along lines previously contemplated." *See Breeden*, 532 U.S. at 272.

C. Pretext

Because Hooks can make out a prima facie case of retaliation, the defendants "must articulate a legitimate nonretaliatory reason for [their] action." *Harris v. Metro. Gov't of Nashville & Davidson Cty.*, 594 F.3d 476, 485 (6th Cir. 2010). Here, Goins and Rumpke Transportation proffer Hooks's violation of the overtime policy as a permissible basis for termination. *See* R. 19-2 (Front Load Dispatch Policy) (Page ID #253). Hooks asserts that the policy was informal and that she was unaware of it. Regardless of whether it was a legitimate nonretaliatory reason to terminate Hooks because she logged unapproved overtime, Hooks has shown, with the facts viewed in the light most favorable to her, that this reason was retaliatory pretext.

---

[2] The district court held that Goins was not individually liable under Title VII, *Hooks*, 2016 WL 3058009, at *1, and Hooks has not raised this issue on appeal. Therefore, we address Goins's liability only under Ohio law.

[3] In addition, even when Goins met with Sand to express this view, the record indicates that they were dealing with only a "possible termination"; nothing had been decided yet. R. 18 (Sand Dep. at 42–43) (Page ID #184).

To demonstrate pretext, a plaintiff must show that the proffered reason (1) has no basis in fact, (2) did not actually motivate the adverse employment action, or (3) was insufficient to motivate the adverse employment action. *Davis v. Cintas Corp.*, 717 F.3d 476, 491 (6th Cir. 2013). There is a genuine issue as to whether the appellees' reason to terminate Hooks—violating the overtime policy—had a basis in fact. True, the appellees have put forth a policy, written by Goins, which stated, "**Any additional hours must be previously approved by me.**" R. 19-2 (Front Load Dispatch Policy) (Page ID #253). And true, Hooks showed up early on January 2, 3, 6, and 7 without getting preapproval. R. 17 (Hooks Dep. at 204–06) (Page ID #102–03). But with every rule, there are exceptions. In this instance, Hooks and Goins had previously discussed that "when weather's bad," Hooks had permission to come in early.[4] *Id.* at 203 (Page ID #102). There is a genuine issue of material fact regarding the "bad" weather on the days in question.[5] The district court's observations about snow accumulation, *Hooks*, 2016 WL 3058009, at *2 & n.1, are incorrect; it based its assumptions on a snow-to-liquid ratio of 1:1. But far less rain is required to create an inch of snow. Moreover, Hooks testified that regardless of the snow accumulation on each day in question, residual snow and an unusually cold winter made the roads icy and hazardous on each day. *See* R. 17 (Hooks Dep. at 210–17) (Page ID #104–05). In fact, Dave Baechle, a foreman who had authority to approve overtime, R. 19 (Goins Dep. at 50) (Page ID #210), "said he was glad when [Hooks] made it in" early on January

[4] The appellees argue that Hooks has waived this argument. Appellees' Br. 28. She has not. In her response to their motion for summary judgment, Hooks argued, "Even more significantly, Goins admitted that he gave Hooks permission to come in early on days when the weather was bad." R. 23 (Pl.'s Resp. 1 Defs.' Mot. Summ. J. at 7) (Page ID #299).

[5] The appellees argue that they had an "honest belief" that the weather was not bad. *See* Appellees' Br. at 28–32. However, as we have held in this context, "if the employer made an error too obvious to be unintentional, perhaps it had an unlawful motive for doing so." *Smith v. Chrysler Corp.*, 155 F.3d 799, 807 (6th Cir. 1998) (quoting *Fischbach v. D.C. Dep't of Corr.*, 86 F.3d 1180, 1183 (D.C. Cir. 1996)). The statements as to hazardous road conditions that Hooks has put forth could lead a reasonable jury to conclude that the appellees' misunderstanding of road conditions was too obvious to be unintentional.

2 "because the weather was so bad." R. 17 (Hooks Dep. at 205) (Page ID #102). Therefore, it is unclear whether the appellees' proffered reason for terminating Hooks had a basis in fact.

Finally, we have also held that increased scrutiny following shortly after complaints of discrimination is evidence of pretext. *See Hamilton v. Gen. Elec. Co.*, 556 F.3d 428, 435–36 (6th Cir. 2009). After Hooks complained to human resources about a foreman's comment that "he was going to be all over [her] like a fat boy at a buffet," Hooks noticed an uptick in scrutiny. *See* R. 17 (Hooks Dep. at 127–28) (Page ID #83). She was written up for "trivial reasons" in September, October, and December. *See id.* And the write-up in December, as discussed above, had no basis in fact when viewing the facts in the light most favorable to Hooks. *See* R. 23-1 (Hooks Decl. ¶ 3) (Page ID #306); R. 23-1 (Work Orders) (Page ID #308–12). Such heightened scrutiny combined with the lack of basis in fact and the temporal proximity discussed in the previous section establishes a genuine issue of material fact as to whether Hooks's termination was pretext for retaliation.

III. Conclusion

Because there is a genuine issue of material fact as to whether Hooks has established a prima facie case of retaliation and as to whether her termination was pretext for retaliation, the district court's judgment is **REVERSED**. This case is **REMANDED** for further proceedings consistent with this opinion.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk