

No. \_\_\_\_\_

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IN THE SUPREME COURT  
OF THE UNITED STATES

TERRA WARGO,

Petitioner,

v.

MJR PARTRIDGE CREEK  
DIGITAL CINEMA 14,

Respondent.

On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Sixth Circuit

**APPENDIX**

Carla D. Aikens  
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No. 25-1143

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Dec 30, 2025  
KELLY L. STEPHENS, Clerk

TERRA WARGO.

Plaintiff-Appellant,

V.

MJR PARTRIDGE CREEK DIGITAL CINEMA  
14,

Defendant-Appellee.

## ORDER

**BEFORE:** GRIFFIN, THAPAR, and HERMANDORFER, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

**ENTERED BY ORDER OF THE COURT**

  
Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

Kelly L. Stephens  
Clerk

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Filed: December 30, 2025

Ms. Carla D. Aikens  
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Detroit, MI 48226-3900

Re: Case No. 25-1143  
*Terra Wargo v. MJR Partridge Creek Dig Cinema*  
Originating Case No. 4:22-cv-12063

Dear Ms. Aikens,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Kelly Stephens  
En Banc Coordinator: Beverly  
Direct Dial No. 513-564-7077

cc: Mr. Thomas W.H. Barlow  
Ms. Elizabeth Parker

Enclosure

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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Clerk

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Filed: November 25, 2025

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Lansing, MI 48906

Re: Case No. 25-1143, *Wargo v. MJR Partridge Creek Digital Cinema*  
Originating Case No. 4:22-cv-12063

Dear Counsel,

The Court issued the enclosed opinion today in this case.

Enclosed are the court's unpublished opinion and judgment, entered in conformity with Rule 36, Federal Rules of Appellate Procedure.

Sincerely yours,

s/Cathryn Lovely  
Opinions Deputy

cc: Ms. Kinikia D. Essix

Enclosures

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION  
File Name: 25a0546n.06

Case No. 25-1143

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**FILED**  
Nov 25, 2025  
KELLY L. STEPHENS, Clerk

|                             |   |                           |
|-----------------------------|---|---------------------------|
| TERRA WARGO,                | ) |                           |
|                             | ) |                           |
| Plaintiff-Appellant,        | ) |                           |
|                             | ) |                           |
| v.                          | ) | ON APPEAL FROM THE UNITED |
|                             | ) | STATES DISTRICT COURT FOR |
|                             | ) | THE EASTERN DISTRICT OF   |
|                             | ) | MICHIGAN                  |
| MJR PARTRIDGE CREEK DIGITAL | ) |                           |
| CINEMA 14,                  | ) |                           |
|                             | ) |                           |
| Defendant-Appellee.         | ) | OPINION                   |

Before: GRIFFIN, THAPAR, and HERMANDORFER, Circuit Judges.

THAPAR, Circuit Judge. Terra Wargo claims that her manager at a movie theater sexually harassed her. She also believes the theater fired her because of her complaints about that alleged harassment. So she sued the theater for sexual harassment, sex discrimination, and retaliation. But since Wargo can’t show that the theater violated either federal or Michigan law, we affirm the district court’s grant of summary judgment.

I.

In 2015, Terra Wargo began working at MJR Partridge Creek Digital Cinema 14 (Partridge Creek). She started off selling candy and popcorn at the concessions stand and showing moviegoers to their seats. But she quickly rose through the ranks, eventually becoming a full-time manager. Another door soon opened when the general manager at Partridge Creek resigned. So Wargo applied and interviewed for that open position. But she didn’t get the job. Instead, MJR

No. 25-1143, *Wargo v. MJR Partridge Creek Digit. Cinema 14*

Group LLC (MJR)—Partridge Creek’s managing company—transferred Paul Finnigan from another one of its theaters to take over as general manager. Joel Kincaid, MJR’s vice president of operations, offered Wargo the general manager position at a different MJR theater—Finnigan’s old job. Wargo declined that promotion, preferring to stay at Partridge Creek.

Although she stayed, Wargo didn’t enjoy working with Finnigan. Only a few weeks into Finnigan’s time at Partridge Creek, Wargo felt that he didn’t treat people well and had issues communicating. When Finnigan emailed managers to let them know he would be changing their schedules, Wargo told a coworker she would “consider transferring.” R. 39-2, Pg. ID 282. She later texted the same coworker that if Finnigan’s efforts at Partridge Creek were poor, Wargo would confront him and talk to his supervisor, Kincaid. *Id.* at 283. That same coworker told Wargo that she’d heard Finnigan insinuate that Wargo would be “trouble.” *Id.* at 272.

During this time, Finnigan had also been texting Wargo at her personal phone number. He texted Wargo that he had gone to a restaurant and that she was “welcome to join.” R. 39-6, Pg. ID 445. Wargo declined that offer. Then Finnigan told her that he planned to teach her about “break[ing] down concessions sales” the next week. *Id.* After mentioning how much he knew about the ordering system, Finnigan made comments such as:

- “I will teach you all I know.”
- “I can show you everything . . . [i]f you let me.”
- “I will teach you everything.”
- “You just have to trust me, and my methods.”
- “You will learn more than you think.”

No. 25-1143, *Wargo v. MJR Partridge Creek Digit. Cinema 14*

*Id.* at 445–48. The next month, Finnigan asked Wargo during work hours whether she wanted to “get something to eat.” *Id.* at 449. Wargo declined. After more conversation, Finnigan thanked Wargo for her help with something at work, adding, “I wanted to treat you to dinner[.]” *Id.* at 454.

A month later, Finnigan passed Wargo while they were both driving near the theater. He gave her a “confused look” and raised his hands, turned his car around, and “followed” Wargo into a parking lot near Partridge Creek. R. 39-8, Pg. ID 458. He then texted her, noting that she was “back at [P]artridge [C]reek” and asking, “Do you secretly just live here :)[?]” R. 39-6, Pg. ID 455. Wargo didn’t respond.

On July 13, 2021, Finnigan again asked Wargo if she wanted to meet at a restaurant or at the theater later. He later testified that he was trying to “mitigate the issues” between him and Wargo. R. 43-1, Pg. ID 527. Wargo said she wasn’t going to leave the theater, so Finnigan met her there.

The meeting didn’t go well. On Wargo’s telling, Finnigan “became angry and aggressive” and asked Wargo why she didn’t like him and what he did wrong. R. 39-11, Pg. ID 463. Wargo told Finnigan that she and others had problems with his lack of “respect and communication.” R. 39-2, Pg. ID 273. The two argued, and Finnigan “slammed a piece of paper down.” *Id.* So Wargo left, and Finnigan followed her to an office next door, where they continued arguing. Wargo tried to leave multiple times, but Finnigan blocked the door. She alleges that Finnigan “touched [her] arm” for about “5 to 10 seconds” to stop her from leaving. *Id.* at 272. Eventually, he moved out of the way, and Wargo headed to her car outside the building.

Wargo filed an internal complaint against Finnigan after this incident. She asked for Finnigan’s removal from the company because of his “inappropriate behavior.” R. 39-11, Pg. ID



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463.<sup>1</sup> Kincaid investigated the complaint. The investigation found that both Wargo and Finnigan acted inappropriately, but there was no sexual harassment. So MJR issued them both written warnings.

MJR required Wargo and Finnigan to review the company’s sexual-harassment and bullying policies and placed Finnigan on a “Performance Improvement Plan” (PIP) for ninety days. R. 39-14, Pg. ID 466–68. Wargo’s warning directed her to bring any future complaints from other employees directly to human resources (HR) and not to discuss them with her coworkers. MJR also gave Wargo the option to transfer to a different MJR theater less than ten miles away. Wargo accepted that offer. While her area of responsibility changed, she remained a manager with the same pay and benefits.

But later, Wargo returned to Partridge Creek. Although she had no more work responsibilities there, she met with her former coworkers in a keyed office at the theater one night for around three hours. One of those coworkers quit from the theater the next day and filed a sexual-harassment complaint against Finnigan. Finnigan heard about the complaint and filed his own complaint asking to be transferred from Partridge Creek because of the “all[e]gations and attempts to remove” him. R. 39-16, Pg. ID 471. He later resigned.

About two weeks after Wargo’s meeting with her former coworkers, MJR fired her. It gave three reasons for that decision: (1) inappropriate comments about a manager, (2) insubordination to and a verbal outburst at a manager, and (3) a refusal to “follow company policy and directive provided in corrective/disciplinary action.” R. 39-18, Pg. ID 475. Kincaid later explained that Wargo had violated unwritten company policy by entering a keyed office at

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<sup>1</sup> The record contains a second document with portions of Wargo’s and Finnigan’s internal complaints. Wargo believes that someone at MJR altered the document. Viewing these facts in the light most favorable to Wargo, we rely on the version she refers to as “correct.” Appellant’s Br. at 10. The district court did the same.

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Partridge Creek when she no longer worked at that location. And Wargo discussed HR-related issues with her coworkers despite the earlier written warning not to do so. In sum, Kincaid and MJR “lost faith that [Wargo] was trustworthy” and therefore fired her. R. 39-3, Pg. ID 331.

So Wargo sued Partridge Creek. She brought claims for sexual harassment and sex discrimination in violation of Title VII of the Civil Rights Act of 1964 and Michigan’s Elliott-Larsen Civil Rights Act (ELCRA). And she alleged that Partridge Creek retaliated against her in violation of those same laws. Partridge Creek moved for summary judgment against Wargo on all claims, and the district court granted that motion. After the district court denied reconsideration, Wargo timely appealed.

## II.

We review the district court’s grant of summary judgment de novo, and we construe the facts in the light most favorable to Wargo. *Goldblum v. Univ. of Cincinnati*, 62 F.4th 244, 251 (6th Cir. 2023). We may “affirm on any ground supported by the record and raised below.” *Patterson v. Kent State Univ.*, 155 F.4th 635, 644 (6th Cir. 2025). A party may prevail on a motion for summary judgment only if “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). Here, Partridge Creek is entitled to summary judgment because Wargo’s claims fail as a matter of law.

## A.

Start with Wargo’s claims of hostile-work-environment sexual harassment. We analyze such Title VII claims under both a subjective and objective standard. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). To satisfy the subjective component, Wargo must personally regard the environment as abusive. *Id.* at 21–22. Under the objective prong, Wargo must show that the challenged conduct was “severe or pervasive enough” to create a working environment that a

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reasonable person would find hostile or abusive. *Id.* Several factors govern whether conduct clears this “high bar,” such as the conduct’s frequency, severity, threatening or humiliating nature, and interference with the employee’s work. *Khalaf v. Ford Motor Co.*, 973 F.3d 469, 485–86 (6th Cir. 2020). And words with “sexual content or connotations” can’t create a hostile workplace environment on their own. *Hawkins v. Anheuser-Busch, Inc.*, 517 F.3d 321, 333 (6th Cir. 2008). These standards apply to both Wargo’s Title VII claim and her ELCRA claims.<sup>2</sup> *Wasek v. Arrow Energy Servs., Inc.*, 682 F.3d 463, 468 (6th Cir. 2012).

The district court correctly found that Wargo can’t meet the “high bar” required to satisfy the objective test. Wargo points to Finnigan’s repeated invitations to join him at a restaurant—three times in a three-month period. But those invitations were sporadic, and none involved explicit pressure or sexual conduct. Wargo points to texts from Finnigan like “I will teach you all I know” and “[y]ou just have to trust me, and my methods” as evidence of sexual undertones. R. 39-6, Pg. ID 445–48. Yet those texts all came immediately after a routine work discussion where Finnigan offered to “show [Wargo] how to break down concessions sales.” *Id.* at 445. And Finnigan’s purported comment to another employee that Wargo would be “trouble” wasn’t sexual in nature either. R. 39-2, Pg. ID 272. In fact, Wargo testified that she thought it just meant she would be a “problem to [Finnigan] moving forward.” *Id.* Even if we considered all Finnigan’s communications sexual in nature and combined them with the incident where he followed Wargo

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<sup>2</sup> ELCRA opens one avenue that Title VII blocks. It allows sexual-harassment claims based on “quid pro quo harassment.” *Chambers v. Tretco, Inc.*, 614 N.W.2d 910, 915 (Mich. 2000). To prove quid pro quo harassment, Wargo would have to show that MJR used her response to unwelcome sexual conduct as a factor in a decision affecting her employment. *Id.* But Wargo has forfeited this argument. Both before the district court and in her appellate briefing, Wargo never discussed the quid pro quo theory of harassment. Instead, she claimed a hostile workplace environment, discrimination, and retaliation. Those arguments don’t allege a quid pro quo claim under ELCRA. So any such claim is forfeited. *See Bose v. Bea*, 947 F.3d 983, 992 (6th Cir. 2020).

No. 25-1143, *Wargo v. MJR Partridge Creek Digit. Cinema 14*

to the Partridge Creek parking lot, his actions weren't "severe or pervasive." *Harris*, 510 U.S. at 21. So a reasonable person wouldn't have found the workplace "hostile or abusive." *Id.*

The July 13 argument between Finnigan and Wargo also didn't establish a hostile workplace environment. While Finnigan may have been angry and aggressive, his actions weren't sexual. After all, Wargo admits they argued about work problems. Instead, she claims Finnigan's blocking the door and making physical contact with her arm for five to ten seconds prove harassment. But this one-time contact wasn't sexual or sufficiently pervasive. In fact, this conduct pales in comparison to other cases where more invasive, aggressive, and sexual conduct still fell short of the "high bar" for a hostile workplace environment. *See Clark v. United Parcel Serv., Inc.*, 400 F.3d 341, 345, 352 (6th Cir. 2005); *Hensman v. City of Riverview*, 316 F. App'x 412, 416 (6th Cir. 2009). In sum, Finnigan's one-time contact with Wargo's arm, even combined with all her other allegations, is simply not enough to establish liability for a hostile work environment based on sexual harassment.

At the end of the day, Wargo asks us to impose liability by simply accepting her subjective interpretation of Finnigan's words and actions. But that's not the law. Instead, we also look to how a reasonable person would've interpreted Finnigan's actions. And a reasonable person wouldn't have found his conduct sufficiently abusive. So Wargo's sexual-harassment claim fails as a matter of law.

#### B.

Wargo's claims of sex discrimination also miss the mark. She can attempt to establish sex discrimination through either direct or indirect evidence. *Vincent v. Brewer Co.*, 514 F.3d 489, 494 (6th Cir. 2007). Under both Title VII and ELCRA, direct evidence must "require[] the conclusion" that MJR took an adverse employment action against Wargo at least in part because

No. 25-1143, *Wargo v. MJR Partridge Creek Digit. Cinema 14*

she is a woman. *Hazle v. Ford Motor Co.*, 628 N.W.2d 515, 520 (Mich. 2001) (quoting *Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp.*, 176 F.3d 921, 926 (6th Cir. 1999)).

Wargo provides no direct evidence of discrimination. She suggests that both MJR’s selection of Finnigan over her as general manager of Partridge Creek and her eventual firing indicate discrimination. But she identifies no statements, documents, or actions that “require[] the conclusion” MJR took those actions because of her sex. *Id.* MJR decisionmakers didn’t say anything about Wargo’s sex at all, let alone in relation to her potential promotion or firing.

Nor does Wargo provide indirect evidence of sex discrimination. The three-step *McDonnell Douglas* framework applies to Title VII and ELCRA sex-discrimination claims based on indirect evidence. *Hayes v. Clariant Plastics & Coatings USA, Inc.*, 144 F.4th 850, 857 (6th Cir. 2025) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04 (1973)); *Hazle*, 628 N.W.2d at 521–22. Wargo must first show a prima facie case of discrimination. *Hayes*, 144 F.4th at 857. If she succeeds, MJR can rebut that case with a legitimate reason for its adverse employment actions. *Id.* And if MJR offers such an explanation, Wargo must then show that a reasonable jury could reject that explanation as pretextual. *Id.*

Wargo fails at the first step—she can’t establish a prima facie case of discrimination. To establish a prima facie case, Wargo must show that (1) she is a woman, (2) she suffered an adverse employment action, (3) she was qualified for her job, and (4) MJR replaced her with a male employee or treated her less favorably than a similarly situated male employee. *Id.* at 858. No one contests that Wargo is a woman or was qualified for her job, so we focus on the second and fourth elements.

Wargo seems to allege three different potential adverse employment actions: (1) MJR’s hiring of Finnigan instead of her as the Partridge Creek general manager, (2) her transfer to a

No. 25-1143, *Wargo v. MJR Partridge Creek Digit. Cinema 14*

different theater, and (3) her termination. But Wargo’s transfer wasn’t an adverse employment action. And for the other two actions, Wargo can’t show that MJR treated her less favorably than a comparable male employee.

First, Wargo’s transfer didn’t constitute an adverse employment action. As Wargo agreed, her transfer to another MJR theater after her argument with Finnigan was lateral. Her pay and benefits didn’t change. She just managed a different department. A lateral transfer like this can sometimes constitute an adverse employment action, but only if the transferee suffers “some injury respecting her employment terms or conditions.” *Muldrow v. City of St. Louis*, 601 U.S. 346, 359 (2024). In short, Wargo must show that the transfer “left her worse off.” *Id.* She hasn’t. Wargo didn’t testify to any harm from the transfer, and she instead mentioned that she got along well with her new manager. Without any alleged harm, Wargo can’t show that her transfer was an adverse employment action.

In contrast, Wargo’s lack of promotion to general manager and termination both qualify as adverse employment actions. However, neither can support her claim because she can’t identify a similarly situated male comparator. True, MJR chose Finnigan over Wargo for the Partridge Creek general manager position. But Wargo and Finnigan weren’t “similarly situated in all relevant aspects of their . . . jobs.” *Hayes*, 144 F.4th at 861. Finnigan had worked as a general manager before, while Wargo hadn’t. Indeed, Finnigan had even helped open the Partridge Creek location. So the two weren’t at all “similarly situated” for the purpose of promotion. *Id.*

The same goes for Wargo’s termination. Wargo again can’t point to a similarly situated male employee whom MJR treated better. For Wargo to identify a comparator, the male employee must have “engaged in the same conduct” as Wargo. *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992). Yet no male employee engaged in the same conduct that led to Wargo’s firing.

No. 25-1143, *Wargo v. MJR Partridge Creek Digit. Cinema 14*

MJR fired Wargo for making “[i]nappropriate comments” about a supervisor and failing to follow a directive from a disciplinary warning. R. 39-18, Pg. ID 475. And while Wargo points to Finnigan as a comparator, he didn’t do either of those things. So he can’t be “similarly situated.” *Hayes*, 144 F.4th at 858. Without any comparators, Wargo’s sex-discrimination claim can’t get off the ground.

### C.

Wargo lastly claims that MJR fired her in retaliation for reporting Finnigan’s alleged sexual harassment and helping a coworker file a sexual-harassment complaint against Finnigan. Both Title VII and ELCRA ban employers from retaliating against their employees for engaging in protected activity. 42 U.S.C. § 2000e-3(a); Mich. Comp. Laws § 37.2701(a). Protected activity includes (1) participating in a formal charge or investigation under Title VII or ELCRA or (2) opposing a violation of Title VII or ELCRA. *Jackson v. Genesee Cnty. Rd. Comm’n*, 999 F.3d 333, 347–48 & n.3 (6th Cir. 2021). And Wargo can establish retaliation with either direct or indirect evidence that her protected activity caused her termination. *Id.* at 344. But Wargo hasn’t done so.

First, Wargo couldn’t have participated in a formal charge or investigation for a violation of Title VII or ELCRA. That’s because no formal investigation had begun before her firing. Wargo didn’t file a formal charge of a Title VII violation with the Equal Employment Opportunity Commission until months after her termination. And her coworker filed only an internal complaint against Finnigan. That complaint isn’t in the record, and Wargo never claims that it alleged a violation of federal or state law. So Wargo hasn’t established that she “participated” in any protected charge or investigation for the purposes of Title VII or ELCRA. *Id.* at 343; *Abbott v. Crown Motor Co.*, 348 F.3d 537, 543 (6th Cir. 2003).

No. 25-1143, *Wargo v. MJR Partridge Creek Digit. Cinema 14*

That leaves opposition to a Title VII or ELCRA violation. Wargo first claims there's direct evidence that she faced retaliation for opposing sexual harassment. She believes MJR admitted it fired her for failing to follow a "directive" not to discuss complaints about other employees with her coworkers. R. 39-18, Pg. ID 475. According to Wargo, because such discussions are protected activities, MJR conceded it retaliated against her.

But there's a problem: Wargo forfeited this theory by not raising it to the district court. Wargo didn't mention this claim in her complaint, even though MJR had sent her the reasons for her dismissal. Nor did she raise this claim in her opposition to summary judgment. By failing to raise this theory before summary judgment, Wargo has forfeited her right to bring it up now on appeal.<sup>3</sup> See *Bridgeport Music, Inc. v. WM Music Corp.*, 508 F.3d 394, 400 (6th Cir. 2007); *Mich. Bell Tel. Co. v. Strand*, 305 F.3d 580, 589–90 (6th Cir. 2002).

Without direct evidence, Wargo must turn to indirect evidence. So she must put forward a prima facie case of retaliation. *Jackson*, 999 F.3d at 343–44. That case requires four elements: (1) Wargo engaged in protected activity, (2) MJR knew about that activity, (3) MJR took materially adverse action against Wargo, and (4) Wargo's protected activity is causally connected to that materially adverse action. *Id.*

But Wargo hasn't established the fourth prong: causation. That's because she didn't respond to MJR's argument before the district court that any protected activity didn't cause an adverse employment action. Wargo offered only a single paragraph on retaliation that took up less than a page. That paragraph simply listed Wargo's communications to MJR management and then

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<sup>3</sup> Wargo did bring up this purported direct evidence in a motion for reconsideration *after* summary judgment. But, as the district court correctly noted in denying that motion, she was too late. R. 53, Pg. ID 891–92 (citing *Brumley v. United Parcel Serv., Inc.*, 909 F.3d 834, 841 (6th Cir. 2018)). And while Wargo's statement of the issues contests the denial of her motion for reconsideration, she doesn't "present[] any argument on this subject in [her] briefs." *Sommer v. Davis*, 317 F.3d 686, 691 (6th Cir. 2003). So it is forfeited. See *id.*



No. 25-1143, *Wargo v. MJR Partridge Creek Digit. Cinema 14*

referenced the rest of her arguments for sex discrimination and sexual harassment. Wargo concluded, “Plaintiff was retaliated against as shown by the arguments in the preceding section of her response.” R. 42, Pg. ID 512. But the “preceding section” never once mentioned retaliation, let alone the issue of causation. Because Wargo made this argument in a “perfunctory manner” without an “effort at developed argumentation,” she forfeited the issue of causation. *Cockrun v. Berrien County*, 101 F.4th 416, 419 (6th Cir. 2024) (cleaned up). And without the required fourth prong of her prima facie case, Wargo’s retaliation claim fails.

\* \* \*

We affirm.

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

No. 25-1143

TERRA WARGO,  
Plaintiff - Appellant,  
  
v.

MJR PARTRIDGE CREEK DIGITAL CINEMA 14,  
Defendant - Appellee.

**FILED**  
Nov 25, 2025  
KELLY L. STEPHENS, Clerk

Before: GRIFFIN, THAPAR, and HERMANDORFER, Circuit Judges.

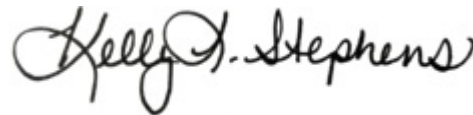
**JUDGMENT**

On Appeal from the United States District Court  
for the Eastern District of Michigan at Flint.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

**ENTERED BY ORDER OF THE COURT**



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Kelly L. Stephens, Clerk

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TERRA WARGO,

Case No. 22-12063

Plaintiff,  
v.

F. Kay Behm  
United States District Judge

MJR PARTRIDGE CREEK DIGITAL  
CINEMA 14,

Defendant.

\_\_\_\_\_ /

**OPINION AND ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT (ECF No. 39)**

**I. PROCEDURAL HISTORY**

Plaintiff, Terra Wargo, brought a complaint against her former employer, MJR Partridge Creek Digital Cinema 14 (MJR) asserting claims of hostile work environment, gender discrimination, and retaliation under Title VII and the Elliott-Larsen Civil Rights Act (ELCRA). (ECF No. 1). Currently before the court is MJR's motion for summary judgment on all claims. (ECF No. 39). This matter is fully briefed, and the court held a hearing on February 7, 2024. (ECF No. 45).

For the reasons set forth below, MJR's motion for summary judgment is **GRANTED**.

## **II. FACTUAL BACKGROUND**

Wargo began working for MJR on November 29, 2015, in the Partridge Creek location in the concessions department and as an usher, when she was 17 years old. (ECF No. 39-2, pp. 13-14). Wargo was promoted to Supervisor in the Summer of 2016 and Assistant Manager in April of 2017. She was then promoted to a salaried, full-time manager in January of 2019 and held that position until the time of termination. (ECF No. 39-2, p. 14). In early 2021, Wargo applied and interviewed for the position of Partridge Creek General Manager. She did not receive the position and instead, Paul Finnigan, the General Manager at MJR's Chesterfield location was given the position. (ECF No. 39-2, p. 18). At that time, Wargo was offered the opportunity to move to the Chesterfield location and take the General Manager position, however, she declined the opportunity for promotion and elected to remain at Partridge Creek. (ECF No. 39-2, p. 19).

In October of 2019, MJR theaters were purchased by Kinopolis Group based in Belgium. (ECF No. 39-3, p. 9). Finnigan first began working at the Partridge Creek location in March of 2021 as General Manager. (ECF No. 39-2, p. 20). As part of his transfer to Partridge Creek, Finnigan was tasked with implementing new procedures adopted by the new owner. (ECF No. 39-5, p. 16).

Before Wargo met Finnigan, she told co-worker Hannah Vennard, via text on April 2, 2021, that “I need to see how he interacts with me in person before I’m a bitch to him. LOL. Respect is earned, not demanded.” (ECF No. 39-2, p. 69). She further stated via text message to Vennard on that same date, “I feel like he’s been in a rut at Chesterfield and wants to reinvent himself here since no one knows him. If its really bad I will be confronting him and talking to Joel” and “I’m ready for the worst because we are already off to a bad start.” (ECF No. 39-2, p. 70). Wargo complained to Matthew Schwartz (the GM that Finnegan was replacing) about Finnigan the week he arrived because she felt he was not speaking to the employees and other employees were expressing concerns to her about that. (ECF No. 39-2, pp. 21-22). Schwartz reported Wargo’s concerns to Joel Kincaid, Vice-President of Operations. (ECF 39-4, pp. 6-7).

On April 20, 2021, Wargo texted Vennard asking whether Finnigan had given her some information regarding work. When Vennard indicated that he had not, Plaintiff replied “Damn it. Ron’s not answering. I don’t want to ask him,” referring to Finnigan. (ECF No. 39-2, p. 72). When asked why she didn’t want to ask Finnigan, she testified “I just didn’t feel comfortable with him.” (ECF No. 39-2, p. 72). Soon thereafter, Wargo set up a meeting with Joshua Jenson, the Director of In-Theater Sales, purportedly to discuss certain operational and reporting

changes, but according to Kincaid, Jenson told him that the real purpose of the meeting was to complain about Finnigan and he reported it to Kincaid also. (ECF No. 39-2, p. 38; ECF No. 39-4, p. 7). Wargo says she met with Jenson to talk about the struggles she was having with her new ITS position and Finnigan was part of the problem. (ECF No. 39-2, p. 39). In response, Kincaid approached Finnigan and spoke to him about his management style and how to handle the transition to the new team and new building. (ECF No. 39-4, p. 7). Wargo admitted that she did not complain to either Schwartz or Jenson about any perceived sexual harassment but rather, only about Finnigan's management style. (ECF No. 39-2, pp. 38-39).

On April 12, 2021, Finnigan invited Wargo to meet at Bar Louie, a restaurant near the MJR theater at Partridge Creek, via text message. (ECF No. 39-2, p. 23; ECF No. 39-6<sup>1</sup>). According to Wargo, the invitation was perceived by her to be harassing because while she had a social and friendly relationship with other GMs, she did not "have any relationship" with Finnigan and "he was still sending me these text messages and inviting me to the bar." (ECF No. 39-2, pp. 49-50). Wargo texted Vennard on May 2, 2021 that "I still want to talk to Joel [Kincaid] but unless he's going to get rid of Paul is there even a point." (ECF No.

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<sup>1</sup> Wargo testified that the text messages she provided as reflected in ECF No. 39-6 are the only ones she bases her claims of "text-based" harassment on. (ECF No. 39-2, p. 39).

39-2, p. 72). On May 24, 2021, Finnigan asked Wargo if she did anything on Monday nights and if she wanted to get something to eat; Wargo declined and the pair proceeded to text about their dogs. (ECF No. 39-6).

Three months after the first invitation to the bar, on July 13, 2021, Finnigan asked Wargo to again meet him at Bar Louie via text message. (ECF No. 39-6). Wargo declined to meet Finnigan at Bar Louie and remained at MJR, indicating she was busy working. When Finnigan came into MJR to speak with Wargo there, she indicated that she did not see his text message. When she did meet in his office, Finnigan asked Wargo what her problem was with him. (ECF No. 39-2, p. 31; ECF No. 39-6). Wargo testified that she told him she felt he was lacking respect and communication with the employees. (ECF No. 39-2, p. 32). Wargo testified that Finnigan slammed down a piece of paper he was holding and she got up to leave the meeting, telling him the meeting was not productive. (ECF No. 39-2, p. 32). Wargo went to the office next door and was followed by Finnigan. According to Wargo, the argument continued, and she attempted to leave but Finnigan was standing in front of the door. She reached behind him and grabbed the door handle, pulling it into his back and opened the door and left the building. (ECF No. 39-2, p. 33). Wargo also testified that she attempted multiple times to leave and Finnigan prevented her from doing so by using his body to block the

door. (ECF No. 39-2, p. 34). Wargo also claims that Finnigan touched her inappropriately during this meeting as he had his hand on her arm for five to 10 seconds to prevent her from leaving. (ECF No. 39-2, p. 28).

The following day, July 14, 2021, Wargo reached out to Kincaid, asking for a meeting to report her concerns. (ECF No. 39-2, p. 37; ECF No. 39-7). Wargo met with Kincaid and Melissa Hattle, Human Resources Manager for MJR, on July 15, 2021, to discuss her concerns about Finnigan and the July 13th incident in particular. (ECF No. 39-2, p. 39). In advance of the meeting, Wargo emailed Kincaid a memo prepared by her along with Vennard detailing their concerns about Finnigan, including both his management style and her concerns about any sexually harassing or sexually discriminatory conduct. (ECF No. 39-2, p. 41; ECF No. 39-8; ECF No. 39-9). In the email, Wargo mentioned the incident where Finnigan passed her driving in the Partridge Creek parking lot, she parked her car by the bar where she was meeting a friend, and she saw Finnigan turn around, drive by the bar and he texted her about seeing her at that bar. (ECF No. 39-8). In her memo, she mentions the uncomfortable text messages. (ECF No. 39-9). After the meeting, Wargo provided a written statement to Hattle detailing her complaints. In her report, she indicated that she felt she could not work in the same building as Finnigan and wanted him fired. (ECF No. 39-2, p. 54; ECF No. 39-



10; ECF No. 39-11<sup>2</sup>). Wargo testified that no verbal sexual harassment transpired outside of the text messages, but also testified that there were two instances of verbal sexual discrimination by Finnigan, neither of which she actually heard but that were told to her by others. (ECF No. 39-2, pp. 26, 27, 28).

Following MJR's investigation, which included viewing the videos of the incident, Kincaid and Hattle determined that while there was no conduct which would qualify as "illegal, sexual harassment or other harassment, discrimination or threat of physical violence," both Wargo and Finnigan had engaged in performance related misconduct and both received written warnings. Finnigan was also placed on a Performance Improvement Plan. (ECF No. 39-5, pp. 40-41; ECF Nos. 39-12, 39-13, 39-14). MJR determined that Wargo repeatedly refused to meet with Finnigan despite specific requests to do so, consistent with her admissions. (ECF No. 39-3, p. 17). In addition, both Wargo and Finnigan admitted to yelling during the meeting and Wargo was found to be not appropriately reporting personnel concerns and discussing them with her peers. (ECF No. 39-3, p. 18). Nevertheless, due to her concerns about working with Finnigan, Wargo

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<sup>2</sup> There is apparently another version of this report, which appears to be altered. (ECF No. 43-2). When asked about this discrepancy, MJR's corporate representative could not answer why it had occurred. (ECF No. 39-3, p. 28). The parties appear to agree that the complaint form found at ECF No. 39-11 is the correct form, although the version submitted to the court cuts off most of the information submitted by Wargo. *Id.*

was offered and accepted the opportunity to transfer to a different MJR theater – MJR Marketplace – in the same position, with the same pay. (ECF No. 39-2, p. 59).

On September 15, 2021, although she was no longer assigned to MJR Partridge Creek, Wargo went to the theater, according to her, to meet with Vennard to assist her with some work-related tasks in the cash office. (ECF No. 39-2, pp. 73-74). Wargo admitted that she no longer had any work responsibilities at Partridge Creek at this time. (ECF No. 39-2, p. 74). While Wargo initially claimed she was in the office for less than an hour, she later admitted that it could have been as long as three hours. (ECF No. 39-2, p. 75).

Wargo admitted that while in the Partridge Creek office for “possibly” up to three hours, contrary to directive given to her verbally and in writing on several occasions, she discussed personnel matters with Vennard and another employee who was in the office. In addition, she discussed personnel matters via text with the other employee. (ECF No. 36-2, p. 76, p. 79). The other employee - Jocelyn Rizo-Llamas - quit the day after meeting with Wargo at Partridge Creek, after submitting a complaint claiming that Finnigan had “grabbed her butt.” (ECF No. 39-2, pp. 76-77). According to Wargo, she was “possibly” assisting Vennard in preparing a complaint form for Rizo-Llamas during the three-hour meeting at

Partridge Creek. Wargo testified that she did not report the complaint herself to MJR's HR department because Vennard was already doing so. (ECF No. 39-2, pp. 77-78). MJR contends that Vennard had already submitted an email to HR on August 29, 2021 reporting employee concerns regarding Finnigan, well before Wargo's meeting in the cash office on September 15, 2021. (ECF No. 39-17; ECF No. 39-5, pp. 11-12). Wargo suggests that it is not clear from that email that the Rizo-Llamas complaint was necessarily included in the scope of that email or whether there was some other email sent by Vennard, however Wargo does not point to any other emails from Vennard in the record. Hattle had already initiated her investigation by attempting to review relevant video footage, although "there did not appear to be camera view of the specific location." (ECF No. 39-5 p. 15). Hattle was unable to interview Rizo-Llamas because she quit soon thereafter. (ECF No. 39-5, p. 14).

On September 16, 2021, Finnigan arrived at MJR Partridge Creek and found that his nameplate had been removed from his office door and was on the floor. In the course of attempting to determine what happened, he reviewed video footage and discovered that Plaintiff had been in the Partridge Creek cash office for approximately three hours the day prior with Vennard and Rizo-Llamas. (ECF No. 39-17). However, he did not identify the person who removed the name

plate. (ECF No. 43-1, p. 55). On September 22, 2021, he submitted a complaint to MJR's HR department complaining about Plaintiff's involvement in the previously filed complaint from Rizo-Llamas. (ECF No. 39-17).

On September 27, 2021, Wargo was terminated by MJR for not following company policy. (ECF No. 39-18). Wargo maintains that she was terminated for speaking out against Finnigan, who was a longtime colleague of Kincaid. Hattle testified that Wargo was terminated because she was discussing confidential matters with peers and not reporting the allegations to the HR department, despite being advised of the proper reporting procedure and the importance of maintaining confidentiality of complaints. (ECF No. 39-5, pp. 31-32). Wargo maintains that she was only advised of this reporting policy on one occasion and points out that Kincaid did not know what the policy was. (ECF No. 39-3, p. 25). Kincaid testified that Wargo was terminated because she had been told not to discuss HR related issues with peers and continued to do so. Further, her three-hour visit to the cash office at Partridge Creek was contrary to the security of that office. Kincaid testified that "[w]e had lost faith that she was trustworthy." (ECF No. 39-3, pp. 23-24). Wargo disputes Kincaid's characterization of the reasons for her dismissal and notes that the Notice of Dismissal refers to three incidents as

the reasons for Wargo's termination, the majority of which she says relate to incidents involving Finnigan:

- 07/08/2021: Inappropriate comments made about GM in presence of another MJR Director
- 07/14/2021: Insubordination, disrespectful comments, and verbal outburst directed at supervisor
- 9/15/2021: Refusal to follow company policy and directive provided in corrective/disciplinary action

(ECF No. 39-18).

At the time of her hire, Wargo signed MJR's Non-Retaliation and Complaint Procedure, which directs employees to immediately report incidents they believe are harassing or discriminatory to their General Manager or, if the complaint relates to the General Manager, report to corporate headquarters. (ECF No. 39-2, p. 13; ECF No. 39-19). Kincaid testified that the policy requires employees to report incidents to HR. (ECF No. 39-3, p. 25). Wargo further points out, however, that Kincaid could not identify any written policy that expressly prohibits someone from talking to coworkers about their potential HR complaints. (ECF No. 39-3, p. 25). Wargo was advised, however, in an email from Hattle on July 15, 2021 that with regard to complaints of harassment and/or discrimination, "the most strict confidentiality is expected and required during any type of

investigation. Breach of this confidentiality is a terminable offense.” (ECF No. 39-2, pp. 50-51; ECF No. 39-20).

Wargo initially testified that she had no discussions with anyone regarding complaints about Finnigan after July 15th outside of the context of MJR’s investigation. (ECF No. 39-2, p. 51). However, she also admitted that she discussed Rizo-Llamas’s complaints about Finnigan with Rizo-Llamas before she quit MJR, “possibly” during the three-hour session at Partridge Creek, and further sent a text message to Rizo-Llamas on September 21, 2021 stating that “It makes me sick the lengths they will go to cover up for this man.” (ECF No. 39-2, pp.77, 79).

In addition to her belief that Finnigan engaged in sexually harassing and/or discriminatory conduct toward her, Wargo testified that Kincaid and Hattle also engaged in sexually harassing and/or discriminatory conduct toward her. (ECF No. 39-2, p. 29). As to Kincaid, Wargo believes that because Kincaid 1) sided with Finnigan before hearing anything she had to say, and 2) told her that he was not going to fire Finnigan and that he would have fired her if he was in Finnigan’s position, he engaged in discriminatory or harassing conduct. (ECF No. 39-2, p. 29). As to Hattle, Wargo says that the sexually harassing or discriminatory conduct was that: 1) she justified many of Finnigan’s actions, 2) she said since

Wargo left the building before her scheduled shift she could be terminated (which Wargo claimed was not true), 3) she stated she was doing her own investigation without Kincaid (which Wargo claimed is not true because Kincaid was involved in all aspects), and 4) she was siding with Kincaid since that is her boss. (ECF No. 39-2, p. 30). Wargo testified that no one at MJR outside of Finnigan, Kincaid and Hattle did anything that she believes constitutes sexual harassment or discrimination. (ECF No. 39-2, p. 30-31). On February 9, 2022, Wargo filed a Charge of Discrimination with the Michigan Department of Civil Rights, claiming that her General Manager “followed me after work” and was “asking her out on dates.” (ECF No. 39-21).

### **III. ANALYSIS**

#### **A. Standard of Review**

When a party files a motion for summary judgment, it must be granted “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). “A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record...; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to

support the fact.” Fed. R. Civ. P. 56(c)(1). The standard for determining whether summary judgment is appropriate is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *State Farm Fire & Cas. Co. v.*

*McGowan*, 421 F.3d 433, 436 (6th Cir. 2005) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)). Furthermore, the evidence and all reasonable inferences must be construed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Where the movant establishes the lack of a genuine issue of material fact, the burden of demonstrating the existence of such an issue shifts to the non-moving party to come forward with “specific facts showing that there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). That is, the party opposing a motion for summary judgment must make an affirmative showing with proper evidence and must “designate specific facts in affidavits, depositions, or other factual material showing ‘evidence on which the jury could reasonably find for the plaintiff.’” *Brown v. Scott*, 329 F.Supp.2d 905, 910 (6th Cir. 2004).

To fulfill this burden, the non-moving party need only demonstrate the minimal standard that a jury could ostensibly find in his favor. *Anderson*, 477 U.S.



at 248; *McLean v. 988011 Ontario, Ltd.*, 224 F.3d 797, 800 (6th Cir. 2000).

However, mere allegations or denials in the non-movant's pleadings will not satisfy this burden, nor will a mere scintilla of evidence supporting the non-moving party. *Anderson*, 477 U.S. at 248, 251.

The Court's role is limited to determining whether there is a genuine dispute about a material fact, that is, if the evidence in the case "is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Such a determination requires that the Court "view the evidence presented through the prism of the substantive evidentiary burden" applicable to the case. *Id.* at 254. Thus, if the plaintiff must ultimately prove its case at trial by a preponderance of the evidence, on a motion for summary judgment the Court must determine whether a jury could reasonably find that the plaintiff's factual contentions are true by a preponderance of the evidence. *See id.* at 252-53. Finally, if the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the movant is entitled to summary judgment. *Celotex*, 477 U.S. at 323. The Court must construe Rule 56 with due regard not only for the rights of those "asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury," but also for the rights of those "opposing such claims and

defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis.” *Id.* at 327.

B. Hostile Work Environment (ELCRA and Title VII)

Under the hostile work environment theory, in order to survive summary judgment, Wargo must establish that: (1) she is a member of a protected class; (2) she was subjected to harassment, either through words or actions, based on sex; (3) the harassment had the effect of unreasonably interfering with her work performance and creating an objectively intimidating, hostile or offensive work environment; and (4) there exists some basis for liability on the part of the employer. *Grace v. Uscar*, 521 F.3d 655, 678 (6th Cir. 2008) (citing *Fleenor v. Hewitt Soap Co.*, 81 F.3d 48, 49 (6th Cir. 1996)). “The standards under Michigan’s Elliott-Larsen Act are similar, except that an employer may be held liable for the creation of a hostile work environment only if it ‘failed to take prompt and adequate remedial action after having been reasonably put on notice of the harassment.’” *Garner v. Gerber Collision & Glass*, 2017 WL 3642192, at \*4 (E.D. Mich. Aug. 24, 2017) (quoting *Mathews v. Massage Green LLC*, 2016 WL 1242354, at \*6 n. 4 (E.D. Mich. Mar. 30, 2016)) (quoting *Chambers v. Trettco, Inc.*, 463 Mich. 297 (2000)). Moreover, “[t]he harassment must meet both an objective and a subjective test, ‘in other words, the conduct must be so severe or pervasive as to

constitute a hostile or abusive working environment both to a reasonable person and the actual victim.’” *Id.* (quoting *Randolph v. Ohio Dep’t of Youth Svcs.*, 453 F.3d 724, 733 (6th Cir. 2006)).

To determine whether a hostile work environment exists, a court must consider the totality of the circumstances rather than examining specific incidents or classes of incidents in isolation. *Williams v. General Motors Corp.*, 187 F.3d 553, 562 (6th Cir. 1999). Factors to consider in determining whether a hostile work environment exists 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 v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993) (emphasis omitted)). In addition, “courts must determine whether 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 work environment.’” *Grace*, 521 F.3d at 678-79 (quoting *Harris*, at 21 (internal citations omitted)). Failure to establish a *prima facie* case is grounds to grant a defendant summary judgment. *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1478 (6th Cir. 1989). Once a hostile work environment is established, an employee alleging sexual harassment by a coworker must still establish that the

employer is liable because it knew or should have known of the harassment yet failed to take prompt and appropriate corrective action. *EEOC v. Harbert-Yeargin, Inc.*, 266 F.3d 498, 518 (6th Cir. 2001). To establish the existence of a hostile work environment a plaintiff must meet both a subjective and objective standard. *Bowman v. Shawnee State University*, 220 F.3d 456, 463 (6th Cir.2000) (“The conduct must be severe and pervasive enough to create an environment that a reasonable person would find hostile or abusive and the victim must subjectively regard that environment as abusive.”).

MJR argues that even accepting Wargo’s claims regarding Finnigan’s conduct as truthful, her hostile work environment claim fails because the conduct was neither severe nor pervasive. MJR also argues that Wargo’s claim fails because it investigated and took remedial action. Wargo responds by repeating all the facts that support her hostile work environment claim but does not fully respond to MJR’s arguments regarding the legal deficiencies of the claim. She also argues that MJR cannot rely on the investigation because it was tainted.

Wargo’s hostile environment claim is based on: (1) Finnigan’s attempts to take Wargo to a bar, despite her repeatedly declining; (2) making Wargo feel uncomfortable with Finnigan’s text statements such as “I will teach you all I know;” “I have a lot to show and teach...You’ll see, I promise;” “I can show you

everything... If you let me;” “I will teach you everything. You just have to trust me, and my methods. You will learn more than you think;” and “I wanted to treat you to dinner...” (ECF No. 39-6); (3) another employee told Wargo that Finnigan said she would be “trouble” (ECF No. 39-2, p. 27); (4) the incident where Finnigan raised his voice, slammed a piece of paper on his desk, placed his hand on her, and blocked her from leaving his office (ECF No. 39-2, pp. 28, 31-34, 41); and (5) what Wargo described as a “stalking like” incident where Finnigan passed her driving in the Partridge Creek parking lot, she parked her car by the bar where she was meeting a friend, and she saw Finnigan turn around, drive by the bar and he texted her about seeing her at that bar (ECF No. 39-2, p. 102).

In the court’s view, the alleged harassment outlined by Wargo was not sufficiently severe or pervasive. “While there is no magic number of incidents that must occur within a certain period, when comparing the conduct about which [Plaintiff] complains to the conduct alleged in cases within this Circuit where a hostile work environment was found to exist, [Plaintiff’s] claim does not favorably compare.” *Hunter v. Gen. Motors LLC*, 2019 WL 1436847, at \*10 (E.D. Mich. Mar. 31, 2019), *aff’d*, 807 F. App’x 540 (6th Cir. 2020) (citing *Clay v. United Parcel Serv., Inc.*, 501 F.3d 695, 707 (6th Cir. 2007) (The Sixth Circuit concluded that 15 incidents over a two-year period was not sufficiently pervasive.)). While

Wargo identified a number of incidents, they occurred sporadically and thus are not pervasive.<sup>3</sup> As to the text messages regarding meeting socially on a handful of occasions over several months, these requests were not so frequent as to be harassing. One of the requests appears to have been an attempt to schedule a meeting with Wargo. (ECF No. 39-6). In addition, the severity of the incidents was slight. While one of the incidents included a physical component, it was in the context of Wargo and Finnigan admittedly yelling at each other and neither party behaved professionally. Moreover, the text messages regarding teaching and training Wargo do not appear to be gender-based harassment and appear to be part of discussions about Wargo learning her new job duties. While some of

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<sup>3</sup> Ample Sixth Circuit authority negates the existence of a hostile work environment here. See *Graves v. Dayton Gastroenterology*, 657 F. App'x 485, 489-90 (6th Cir. Sept. 13, 2016) (comparing *Thornton v. Fed. Express Corp.*, 530 F.3d 451, 456 (6th Cir. 2008) (finding a genuine dispute of fact as to the existence of a hostile work environment where the plaintiff's supervisor was preoccupied with sex talk and made unwelcome, persistent, and increasingly intimidating advances); *Hawkins v. Anheuser-Busch, Inc.*, 517 F.3d 321, 334-35 (6th Cir. 2008) (finding a genuine dispute of fact where the harasser repeatedly made "graphic, personal, and sexually explicit" comments and regularly touched multiple women); *Randolph v. Ohio Dept. of Youth Servs.*, 453 F.3d 724, 734-36 (6th Cir. 2006) (finding a genuine dispute of fact where the plaintiff "was subject to daily threats, derogatory comments, verbal harassment, foul language, and several serious physical assaults to which members of the opposite sex were not exposed."); with *Clark v. United Parcel Serv., Inc.*, 400 F.3d 341, 351-52 (6th Cir. 2005) (comparing cases and finding no hostile work environment where the plaintiff alleged isolated incidents of her supervisor telling vulgar jokes, twice placing his vibrating pager on her thigh, and pulling on her overalls after asking what type of underwear she was wearing); and *Knox v. Neaton Auto Prods. Mfg., Inc.*, 375 F.3d 451, 459-60 (6th Cir. 2004) (finding no hostile work environment where the plaintiff's co-worker continuously commented on women's physical appearances and spoke at the shift meetings about sleeping with different women)).

these incidents may have been bothersome, even in their totality, they are not so severe and pervasive that they should interfere with an employee's work performance.

Moreover, the Sixth Circuit distinguishes between harassment and *discriminatory* harassment. *Trepka v. Bd. of Educ.*, 28 F. App'x 455, 461 (6th Cir. 2002) (citing *Bowman v. Shawnee State Univ.*, 220 F.3d 456, 464 (6th Cir. 2000)); *see also Graves v. Dayton Gastroenterology, Inc.*, 657 F. App'x 485, 489 (6th Cir. 2016) (To be actionable, the harassment must establish that members of one sex are exposed to disadvantageous terms or conditions of employment to which the members of the other sex are not exposed. "This typically includes explicit or implicit proposals of sexual activity, as well as non-sexual conduct that evinces anti-female animus.") (citations and internal quotation marks omitted)).

An employee must demonstrate that the allegedly harassing conduct was motivated by a bias towards the employee's protected class, here, gender. *Id.* (citing *Faragher v. City of Boca Raton*, 524 U.S. 775, 778 (1998)). And Wargo's belief that these incidents of purported harassment were because of her gender does not create an issue of fact. While it may satisfy the subjective prong of the hostile work environment test, it does not create a material issue of fact because she must also satisfy the objective prong of that test, which requires an

environment sufficiently severe or pervasive to create the type of environment that a reasonable person would find it to be hostile or abusive. Wargo does not offer evidence suggesting that the purportedly harassing conduct was motivated by her gender. In the court's view, Wargo has not proffered sufficient evidence from which a jury could reasonably conclude that she was subjected to a severe or pervasive hostile work environment based on her *gender*. Accordingly, summary judgment in favor of MJR on Wargo's hostile work environment claims is warranted.<sup>4</sup>

C. Discrimination (Title VII and ELCRA)

Wargo alleges that she was discriminated against and discharged based on her gender in violation of Title VII and Elliott-Larsen. The Sixth Circuit reviews claims of discrimination brought under the ELCRA under the same standards as claims brought under Title VII. *Ladenberger v. Plymouth-Canton Cmty. Sch.*, 2018 WL 3914709, at \*5 (E.D. Mich. Aug. 16, 2018) (citing *Idemudia v. J.P. Morgan Chase*, 434 F. App'x 495, 499 (6th Cir. 2011)). "Direct evidence is that evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the employer's actions." *Jacklyn v. Schering-Plough*

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<sup>4</sup> Because the court concludes that Wargo has not established a prima facie case, it need not address MJR's arguments regarding the investigation and remedial action.



*Healthcare Prods. Sales Corp.*, 176 F.3d 921, 926 (6th Cir. 1999). Absent direct evidence of discrimination, a plaintiff may rely on circumstantial evidence to establish a case of gender discrimination under the familiar burden-shifting framework of *McDonnell Douglas Corp v. Green*, 411 U.S. 792 (1973). To establish a *prima facie* case for Title VII gender discrimination under that framework, Plaintiff must show that: (1) she belongs to a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) that the job was given to a person outside the protected class or that she was treated differently than a similarly situated, non-protected employee. *Abdulnour v. Campbell Soup Supply Co.*, 502 F.3d 496, 501-02 (6th Cir. 2007); *Lyons v. Metropolitan Gov't of Nashville & Davidson Cnty.*, 416 F. App'x 483 (6th Cir. 2011).

If a plaintiff establishes a *prima facie* case, the defendant can rebut it by articulating a legitimate non-discriminatory reason for its action. *Id.* Thereafter, a plaintiff has the burden of showing, by a preponderance of the evidence, that the legitimate asserted reason was not the actual reason for the defendant's actions, but in fact was pretext for gender discrimination. *Chen v. Dow Chem. Co.*, 580 F.3d 394, 400 (6th Cir. 2009). A plaintiff may establish that the defendant's proffered reason is mere pretext by establishing that it: (1) has no basis in fact; (2) did not actually motivate plaintiff's termination; or (3) was insufficient to warrant

plaintiff's termination. *Abdulnour*, 502 F.3d at 502 (citing *Manzer v. Diamond Shamrock Chems. Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994)).

MJR first argues that Wargo has no direct evidence of discrimination, focusing on the text messages between Finnigan and Wargo. Wargo's response does not address whether this evidence, or any other evidence, constitutes direct evidence of discrimination. "Direct evidence is composed of only the most blatant remarks, whose intent could mean nothing other than to discriminate on the basis of some impermissible factor." *Kostic v. United Parcel Serv., Inc.*, 532 F. Supp. 3d 513, 527 (M.D. Tenn. 2021); *see also Umani v. Michigan Dep't of Corr.*, 432 F. App'x 453, 458 (6th Cir. 2011). Direct evidence of discrimination does not require a factfinder to draw any inferences in order to conclude that the challenged employment action was motivated at least in part by prejudice against members of the protected group. *Id.*; *see also Johnson v. Kroger Co.*, 319 F.3d 858, 865 (6th Cir. 2003). Importantly, the evidence must establish not only that the plaintiff's employer was predisposed to discriminate on the basis of gender, but also that the employer acted on that predisposition. *Id.* (citing *Lovell v. Champion Car Wash, LLC*, 969 F. Supp. 2d 945, 951 (M.D. Tenn. 2013) (direct evidence of discrimination does not require a factfinder to draw any inferences in order to conclude that the challenged employment action was motivated at least

in part by prejudice against members of the protected group)). None of the evidence marshaled by Wargo falls into the category of direct evidence.

Accordingly, she cannot establish gender discrimination in this manner.

MJR also challenges Wargo's discrimination claim based on circumstantial evidence under the *McDonnell Douglas* burden-shifting paradigm. MJR challenges only two elements of the prima facie case – that Wargo was subject to an adverse employment action and that she was treated less favorably than a similarly situated employee. Under Sixth Circuit law, to establish that she was treated differently than similarly situated employees, Wargo must show that she and her proposed comparators were similar in all relevant respects. *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344, 353 (6th Cir. 1998). In every case, the court must make an “independent determination” of what factors are relevant, and that determination depends on whether certain factors “are meaningful to the particular claim of discrimination presented.” *Rembert v. Swagelok Co.*, 2023 WL 3094546, at \*7 (6th Cir. Apr. 26, 2023) (quoting *Bobo v. United Parcel Serv., Inc.*, 665 F.3d 741, 751 (6th Cir. 2012), abrogated on other grounds by *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338 (2013)); see also *Wright v. Murray Guard, Inc.*, 455 F.3d 702, 710 (6th Cir. 2006) (explaining the necessity of independently determining factors relevant to this inquiry). Ordinarily, “to be

deemed ‘similarly-situated,’ the individuals with whom the plaintiff seeks to compare his/her treatment must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer’s treatment of them for it.” *Jordan v. Mathews Nissan, Inc.*, 539 F. Supp. 3d 848, 873 (M.D. Tenn. 2021) (quoting *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992)). At best, Wargo argues in her response that she was treated differently from Finnigan:

Defendant’s notice of dismissal states the incidents involving Paul Finnigan formed the majority of the listed reasons for her dismissal. (Defendant’s Exhibit Q). Defendant’s notice also lists the incident with Paul Finnigan as a reason for dismissal. This leads to another question if Ms. Wargo’s actions were enough to been terminated almost immediately after being transferred, why was Paul Finnigan only placed on a PIP when multiple complaints had been received about his inappropriate behavior. (See Defendant’s Exhibit P).

(ECF No. 42, PageID.511). However, Wargo offers no analysis or evidence suggesting that she and Finnigan are proper comparators. Wargo must show that Finnigan “engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer’s treatment of them for it.” *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992). For

the plaintiff to meet her burden, she must do more than make “generalized and vague allegations” that another employee was treated better than her. *Stewart v. Esper*, 815 F. App’x 8, 17 (6th Cir. 2020) (quoting *Frazier v. USF Holland, Inc.*, 250 F. App’x 142, 147 (6th Cir. 2007)). As to the incident where Wargo and Finnigan were both disciplined, he was disciplined more severely given that he was given a written warning and put on a performance improvement plan, while Wargo only received a written warning. As to the incidents leading to her termination and her termination itself, Wargo does not identify anyone outside her protected class who engaged in similar conduct to her and was neither disciplined nor terminated. Wargo’s failure to identify any comparators is fatal to her prima facie case of gender discrimination.<sup>5</sup> Accordingly, MJR is entitled to summary judgment on these claims.

#### D. Retaliation

Title VII prohibits an employer from retaliating against an employee “because [s]he has made a charge” of discrimination. *Charles v. MedTest DX, Inc.*, 2018 WL 3997673, at \*5 (E.D. Mich. Aug. 21, 2018) (citing 42 U.S.C. § 2000e-3(a)). The Elliott-Larsen statute includes a similar provision, see Mich. Comp. Laws

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<sup>5</sup> Given this conclusion, the court need not address Defendant’s alternative arguments for summary judgment on these claims.

§ 37.2701(a), which is analyzed under the same standard. *Charles*, at \*5 (citing *Kuhn v. Washtenaw Cty.*, 709 F.3d 612, 627 (6th Cir. 2013)). A retaliation claim can be established “either by introducing direct evidence of retaliation or by proffering circumstantial evidence that would support an inference of retaliation.” *Imwalle v. Reliance Med. Prods., Inc.*, 515 F.3d 531, 538 (6th Cir. 2008). “Direct evidence is that evidence which, if believed, requires no inferences to conclude that unlawful retaliation was a motivating factor in the employer’s action.” *Id.* at 543-44 (citing *Abbott v. Crown Motor Co.*, 348 F.3d 537, 542 (6th Cir. 2003); *Christopher v. Stouder Mem’l Hosp.*, 936 F.2d 870, 879 (6th Cir. 1991)). Where a plaintiff does not have direct evidence of retaliation and instead relies only on circumstantial evidence, the *McDonnell Douglas* framework applies. *Jordan*, 490 F. App’x at 742. To establish a *prima facie* case of retaliation, Wargo must establish that: (1) she engaged in a protected activity under Title VII; (2) her “exercise of such protected activity was known by the defendant; (3) thereafter, the defendant took an action that was ‘materially adverse’ to the plaintiff; and (4) a causal connection existed between the protected activity and the materially adverse action.” *Rogers v. Henry Ford Health Sys.*, 2018 WL 3629057, at \*8 (6th Cir. July 31, 2018) (quoting *Laster v. City of Kalamazoo*, 746 F.3d 714, 730 (6th Cir. 2014)).

MJR argues both that Wargo did not engage in protected activity, given the vague nature of her complaints, and that she cannot show her termination was causally connected to her complaints. In response to MJR's first argument, Wargo identifies all the various complaints that Wargo made. As to the second argument, Wargo merely refers the court to the arguments she made regarding her other claims. However, nowhere in her response brief does Wargo address MJR's failure of causation argument. Accordingly, she has abandoned this claim. *See Doe v. Bredesen*, 507 F.3d 998, 1007-08 (6th Cir. 2007) (stating that the district court "correctly noted ... that [plaintiff] abandoned [certain] claims by failing to raise them in his brief opposing the government's motion to dismiss the complaint"); *PNC Bank, Nat'l Ass'n v. Goyette Mech. Co.*, 88 F. Supp. 3d 775, 785 (E.D. Mich. 2015) ("A plaintiff abandons undefended claims."); *Mekani v. Homecomings Fin., LLC*, 752 F. Supp. 2d 785, 797 (E.D. Mich. 2010) (stating that where a plaintiff fails to respond to an argument in a motion to dismiss, "the Court assumes he concedes this point and abandons the claim"). Wargo has failed to rebut or address MJR's causation argument and therefore, Wargo's retaliation claims are dismissed.

#### **IV. CONCLUSION**

For the reasons set forth above, the court **GRANTS** MJR's motion for summary judgment.

**SO ORDERED.**

Date: February 21, 2024

s/F. Kay Behm

F. Kay Behm

United States District Judge



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TERRA WARGO,

Plaintiff,

Case No. 22-12063

v.

F. Kay Behm  
United States District Judge

MJR PARTRIDGE CREEK  
DIGITAL CINEMA 14,

Defendant.

**ORDER DENYING MOTION  
FOR RECONSIDERATION (ECF No. 50)**

**I. PROCEDURAL HISTORY**

Plaintiff, Terra Wargo, brought this action against her former employer, MJR Partridge Creek Cinema 14, alleging claims of hostile environment, gender discrimination, and retaliation. After the court granted Defendant's motion for summary judgment, Plaintiff filed a motion for reconsideration. For the reasons explained below, Plaintiff's motion is denied.

**II. ANALYSIS**

Under the amended Local Rules, the court will not grant reconsideration of a final order based on the outdated "palpable defect" standard. See LR 7.1(h)(1).

Rather, the party seeking reconsideration must establish that relief is warranted under Federal Rule of Civil Procedure 59(e) or 60(b). *Id.* Plaintiff relies on Rule 59(e), which permits the court to alter or amend its judgment based upon “(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.” *Brumley v. UPS*, 909 F.3d 834, 841 (6th Cir. 2018) (citation omitted). A motion under Rule 59 “may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Id.* (quoting *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008)).

Plaintiff contends that the court erred in granting summary judgment in favor of Defendant on her hostile work environment claim. The court found that Plaintiff’s allegations, accepted as true, did not rise to the level of severe and pervasive conduct. See ECF No. 47 at PageID 679-82. Plaintiff argues that whether conduct is severe or pervasive enough to rise to the level of a hostile environment should be a question for the jury. However, courts are required to consider whether a plaintiff’s allegations meet the “relatively high bar for what amounts to actionable discriminatory conduct under a hostile work environment theory.” *Phillips v. UAW Int’l*, 854 F.3d 323, 328 (6th Cir. 2017); see also *Khalaf v. Ford Motor Co.*, 973 F.3d 469, 485-86 (6th Cir. 2020) (“This standard sets a high bar for

plaintiffs in order to distinguish meaningful instances of discrimination from instances of simple disrespect.”). Plaintiff does not distinguish the cases illustrating that her allegations do not rise to the level of actionable harassment. ECF No. 47 at PageID 681 n.3. Having failed to meaningfully address this authority, Plaintiff has not demonstrated that the court made a clear error of law.

Plaintiff also argues that the court erred by ruling that she did not establish a prima facie case of gender discrimination. The court determined that Plaintiff did not identify employees outside of her protected class that were treated more favorably than she was. ECF No. 47 at PageID 687-88. Plaintiff’s motion for reconsideration does not address the issue of proper comparators, which is fatal to her claim. *Id.* As such, she has not identified a clear error of law or other basis for relief under Rule 59(e).

Plaintiff challenges the dismissal of her retaliation claim. In response to Defendant’s motion for summary judgment, she did not address Defendant’s argument that her termination was not causally connected to her complaints. ECF No. 42 at PageID 512. As a result, the court considered the claim abandoned, consistent with Sixth Circuit authority. ECF No. 47 at PageID 90; *McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997) (“[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed

waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to . . . put flesh on its bones.”). Plaintiff may not use her motion for reconsideration to “raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Brumley*, 909 F.3d at 841 (citation omitted).

### III. CONCLUSION

Plaintiff’s motion for reconsideration merely restates her arguments without identifying appropriate grounds for relief under Rule 59(e), such as a clear error of law. Therefore, **IT IS HEREBY ORDERED** that Plaintiff’s motion (ECF No. 50) is **DENIED**.

Date: February 13, 2025

s/F. Kay Behm  
F. Kay Behm  
United States District Judge