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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3124-10T2

MICHAEL FARRELL,

Plaintiff-Appellant,

v.

TOYS R' US and CARY REGNENYE,[1]

Defendants-Respondents.

Argued February 1, 2012 - Decided September 18, 2012

Before Judges Axelrad, Sapp-Peterson and Ostrer.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-2619-08.

Mark Mulick argued the cause for appellant.

Todd H. Girshon argued the cause for respondents (Jackson Lewis, L.L.P., attorneys; Mr. Girshon, of counsel and on the brief; Joseph C. Toris, on the brief).

PER CURIAM

In this appeal, plaintiff, Michael Farrell, challenges the trial court's order granting summary judgment to his former employer, defendant Toys R' Us (TRU), and individual supervisor, defendant Cary Regnenye. Plaintiff's complaint alleged hostile

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[1] Also spelled Regenye in the appellate record.

work environment, disparate treatment, and wrongful retaliation, contrary to the New Jersey Law Against Discrimination, (LAD) N.J.S.A. 10:5-1 to -49, and a common-law claim for intentional infliction of emotional distress. We reverse that part of the trial court's order granting summary judgment dismissing Farrell's hostile work environment and disparate treatment claims, but otherwise affirm.

I.

Because Farrell's complaint was dismissed at the summary judgment stage, we view the facts in the light most favorable to him as the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Farrell began working for (TRU) as a manager-in-training in September 2005. His employment was at-will, and upon commencement of his employment, he received a copy of TRU's rules and regulations. TRU has an equal employment opportunity policy which includes an anti-discrimination policy. Farrell also received a copy of TRU's anti-harassment policy during his orientation. A portion of the that policy states that an employee must immediately report claims of harassment and that TRU will investigate all complaints and take appropriate corrective action upon receiving a complaint.

Farrell's position was changed from manager-in-training to assistant store manager in September 2006. In July 2007, he was assigned to a TRU store in Livingston, where he served as acting manager of the store. According to TRU District Manager Daniel Hannay's evaluations of September 12, 2007 and February 8, 2008, Farrell performed his job exceptionally well from the commencement of his employment until early 2008.

Regnenye became Farrell's immediate supervisor in late 2007 and immediately exhibited his dislike of Farrell. Farrell was forty-six years old at that time. Regnenye and other store employees often referred to him as "the old man." On one occasion, Regnenye made fun of "the old man's crackers" and threatened to crush them.[2] Regnenye referred to him as the "old man on the truck" approximately nine to ten times between March 1 and March 14, 2008.

On March 14, in particular, while unloading a trailer with a co-worker, House Supervisor Stephen Preziosi, in the back of the store, Regnenye approached Farrell. After scolding him for filing an Item Discrepancy Report to a TRU district manager and operations manager, Regnenye repeatedly threatened to punch Farrell in the face and "kick his ass." During these verbal

[2] Farrell is a diabetic who must carry crackers and consume them at times to regulate his blood sugar content.

threats, Regnenye shook a clipboard at Farrell and blocked him from retreating from the truck he was unloading. At no point, however, did Regnenye actually physically touch him. Farrell reported Regnenye's conduct to TRU's upper management and human resources department.

On March 15, Farrell met with TRU Human Resources (HR) Manager Patricia Mulcahy (Mulcahy). He briefly advised her about the incident the previous day, and Mulcahy launched an investigation. On March 19, at Mulcahy's direction, Farrell prepared a statement concerning the incident. He reiterated that Regnenye physically threatened him and taunted him by repeatedly calling him the "old man on the truck." Preziosi provided his own statement corroborating Farrell's accusations that Regnenye verbally abused employees. He stated that Regnenye unjustifiably threatened to fire him and Farrell multiple times.

Also on March 19, while Mulcahy's investigation was still pending, Regnenye wrote a Performance Corrective Action Complaint against Farrell purportedly based upon discussions he had with Farrell on February 28, 2008. As a result of those discussions, Farrell was directed to put a particular plan in process by March 3, 2008. The report further indicated:

> I have had several conversations with Mike regarding his leadership and creating plans

> for his team each day. The purpose of this is to not only communicate to me what his plan is but also to provide me with the ability to follow up on his plan and support him. I have asked for daily plans for his vacation[,] which was 3/6 - 3/12[,] as well as for 3/15 - 3/18[,] which was a span of time that Mike and I did not share a scheduled work day. I did not receive either.

Regnenye responded to Farrell's allegations in an incident report, in which he stated, "I may have used the term "kick your ass" from a motivational point of view which[,] in hindsight[,] may have been inappropriate. At no point in time was I ever threatening Mike or any other employee. I have never been involved in a physical altercation in my life." Mulcahy recommended that Regnenye be transferred out of the Livingston store and be given a "letter of education"[3] regarding his inappropriate comments. She also recommended transferring Farrell out of the Livingston store due to poor performance. Farrell was transferred to TRU's store in Union March 31, 2008.

Marc Fardin was the manager of the Union store when Farrell was transferred there. On July 8, 2008, he issued a memorandum detailing issues with Farrell's performance since his transfer to the Union store. One month later, he placed Farrell on a performance improvement plan, which outlined the areas in which

[3] The record does not define "letter of education."

Farrell needed to improve, the required actions for improvement he identified, and the timeline for achieving improvement. Among the areas were (1) reading and reacting to instructions provided in emails, (2) ensuring the "store [was] recovered 100% to standard every closing shift[,]" and (3) ensuring "the truck crew operates at a minimum standard of 125 boxes per man hour." Farrell acknowledged in his deposition that all of these tasks were his responsibility as assistant manager.

TRU terminated Fardin in early May 2009. Jeremy Grunin replaced him as manager of the Union store. Grunin issued Farrell a Level 1 Corrective Action Report for "[f]ailure to carry out duties" on August 21, 2009. Grunin stated that "Mr. Farrell continues to struggle with his inabilities to effectively plan, delegate and hold accountable his [t]eam."

On November 1, 2009, Curtis Hurst replaced Grunin as manager of the Union store. He issued a Corrective Action Report to Farrell on December 15, claiming that on December 10, and December 14, 2009, when Farrell "was the closing [m]anager[,] . . . a $24,000 deposit and $37,000 deposit, respectively, were not dropped in the safe, securing these funds in the safe for the evening, as per Company Standard Operating Procedures." Hurst also noted:

> Mr. Farrell [has] been previously place[d] on Corrective Action for Overall Job

> Performance, specifically a Level 1 in August 2009[,] and a Level 3 in December 2009. Once again, Mr. Farrell[']s overall attitude and [demeanor are] not positive and motivating. He speaks openly about his frustrations regarding the Company, Store and job responsibilities. He is negatively impacting morale in the store, which will not be tolerated by the Company.

Hurst placed Farrell on Level 3 "Corrective Action for Overall Job Performance" and advised: "If there are any further issues with Mr. Farrell's Overall Job Performance or with his ability to perform the essential functions of his job, it will result in immediate termination." In March 2010, TRU provided Farrell with his annual review for 2009. Farrell received a rating of "below expectations" in eleven out of thirteen categories, including all categories relating to position competencies.

In early 2010, TRU began planning a nationwide reduction in force (RIF). As part of the RIF, TRU decided to "terminate assistant store managers who had received 'below expectations' ratings for the previous year[.]" Farrell was an assistant manager whose ratings fell below expectations in 2009 and he was therefore terminated on March 28, 2010. Seventy-four other TRU assistant managers throughout the United States were also terminated.

Farrell originally filed his complaint in Superior Court on March 31, 2008, asserting that he experienced a hostile work

environment while employed by TRU. He amended the complaint on January 8, 2009, to include an allegation that his transfer to another TRU store in Union constituted retaliation, in violation of the LAD's anti-retaliation section, N.J.S.A. 10:5-12(d). He amended the complaint again on March 12, 2010, and for a third and final time on May 11, 2010, to include an additional claim for disparate treatment, as well as a claim for retaliation asserted on behalf of three witnesses with information relevant to his claims, who TRU terminated.

Following oral argument, the trial court issued a letter opinion later that day, granting defendants' motion for summary judgment and dismissing the complaint in its entirety. The court found that Farrell did not establish (1) the severe or pervasive requirement for a hostile work environment, (2) that Regnenye's words were discriminatory, (3) that the use of the phrase "old man" by Regnenye and other employees represented age bias, (4) that Regnenye knowingly and substantially assisted co-employees' use of the phrase "old man" in reference to Farrell, (5) that the termination of three of his four corroborating witnesses constituted LAD-prohibited retaliation, (6) that TRU's offered reasons for terminating Farrell's employment were a mere pretext for retaliation, and (7) that TRU and Regnenye's actions

demonstrated discriminatory intent. The present appeal followed.

II.

Farrell raises the following points on appeal:

> POINT I
> THE TRIAL COURT ERRED IN FINDING NO REASONABLE JURY COULD CONCLUDE THAT PLAINTIFF/APPELLANT MICHAEL FARRELL WAS SUBJECTED TO A HOSTILE WORK ENVIRONMENT BASED UPON HIS AGE.
>
> > A. Defendant, Toys R' Us[,] was negligent in failing to enforce its anti-discrimination policy, it knew of Regnenye's conduct and failed to correct it and Regnenye abused the agency authority granted to him by Toys R' Us.
> >
> > B. The mere presence of an anti-discrimination policy does not immunize Toys R' Us from liability for the hostile work environment Mr. Farrell experienced.
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> POINT II
> THE TRIAL COURT ERRED IN FINDING THAT MR. REGNENYE'S REPEATED DISPARAGING USE OF THE WORDS "OLD MAN" AND HIS ENCOURAGEMENT OF OTHER EMPLOYEES TO DISPARAGE MR. FARRELL BY CALLING HIM "OLD MAN" WERE NOT RELATED TO MR. FARRELL'S AGE.
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> POINT III
> THE TRIAL COURT ERRED IN FINDING THAT THE TERMINATION OF THE EMPLOYMENT OF MR. FARRELL'S CORROBORATING WITNESSES WAS NOT LAD-PROHIBITED RETALIATION BECAUSE THEY WERE NOT FAMILY MEMBERS.

POINT IV
THE TRIAL COURT ERRED IN DISMISSING MR. FARRELL'S RETALIATION CLAIMS.

POINT V
THE TRIAL COURT ERRED IN DISMISSING MR. FARRELL'S DISPARATE TREATMENT CLAIM APPARENTLY ON ITS OWN MOTION.

POINT VI
THE TRIAL COURT ERRED IN FINDING THAT THE LAD PRE-EMPTED MR. FARRELL'S COMMON-LAW CLAIM FOR THE INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

POINT VII
THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT/RESPONDENT CARY REGNENYE WAS NOT PERSONALLY LIABLE AS AN AIDER AND ABETTOR UNDER N.J.S.A. 10:5-12(e) AND/OR RETALIATOR UNDER N.J.S.A. 10:5-12(d).

We review summary judgment decisions de novo and apply the same standard utilized by the trial court, namely, whether the evidence, when viewed in the light most favorable to the non-moving party, raises genuinely disputed issues of fact sufficient to warrant resolution by the trier of fact or whether the evidence is "so one-sided that one party must prevail as a matter of law." Brill, supra, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)). "Bare conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritor[i]ous application for summary judgment." U.S. Pipe & Foundry Co. v. Am. Arbitration Ass'n, 67 N.J. Super.

384, 399-400 (App. Div. 1961). Summary judgment should be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2.

III.

Farrell first argues the trial court erred in finding that no reasonable jury could conclude he was subjected to a hostile work environment based upon his age. We agree and believe summary judgment was improperly granted.

To establish a prima facie case of age-based hostile work environment, a plaintiff must show that a defendant engaged in conduct

> that occurred because of [plaintiff's age] and that a reasonable [person] would consider sufficiently severe or pervasive to alter the conditions of employment and create an intimidating, hostile, or offensive working environment. For the purposes of establishing and examining a cause of action, the test can be broken down into four prongs: the complained-of conduct (1) would not have occurred but for [plaintiff's age]; and it was (2) severe or pervasive enough to make a (3) reasonable [person] believe that (4) the conditions of employment are altered and the working environment is hostile or abusive.
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> [Lehmann v. Toys 'R' Us, 132 N.J. 587, 603-04 (1993)].

"The LAD is not a fault- or intent-based statute. A plaintiff need not show that the employer intentionally discriminated or harassed [him], or intended to create a hostile work environment. The purpose of the LAD is to eradicate discrimination, whether intentional or unintentional." Id. at 604-05.

"The first element of the test is discrete from the others. It simply requires that in order to state a claim under the LAD, a plaintiff show by a preponderance of the evidence that [he] suffered discrimination because of [his age]." Id. at 604.

There is no dispute that Regnenye referred to plaintiff as "old man." In his deposition, Regnenye acknowledged that he referred to Farrell as "old man" a handful of times and that "it was a nickname in the building." There is no evidence in the record that anyone else in the building, where eighty employees worked, was referred to as "old man," and Regnenye also acknowledged that Farrell was the "most senior" manager in the building, although he indicated he had no idea whether he was the oldest person.

A supervisor calling an employee "old" is sufficient for a plaintiff's claim to survive summary judgment. See, e.g., Mojica v. El Conquistador Resort & Golden Door Spa, 714 F. Supp. 2d 241, 256-57 (D.P.R. 2010) (holding that when a supervisor

called the plaintiff "old guy," "old ass," and "old asshole," the plaintiff "create[d] a genuine issue of material fact regarding whether he suffered adverse employment actions, including his termination, because of his age"); Schallehn v. Central Trust & Sav. Bank, 877 F. Supp. 1315, 1326-27 (N.D. Iowa 1995) (determining that a genuine issue of material fact existed concerning age discrimination when the plaintiff alleged that his supervisor told another employee that he "likes to hire younger employees" and called an employee an "old man"). Because a jury could conceivably determine that the first prong of the hostile work environment test has been satisfied, the motion judge committed error in granting defendants summary judgment on this issue.

> However, the second, third, and fourth prongs, while separable to some extent, are interdependent. One cannot inquire whether the alleged conduct was "severe or pervasive" without knowing how severe or pervasive it must be. The answer to that question lies in the other prongs: the conduct must be severe or pervasive enough to make a reasonable [person] believe that the conditions of employment are altered and her working environment is hostile.
>
> [Lehmann, supra, 132 N.J. at 603-04].

The court in Lehmann noted that it is possible for there to be a hostile work environment when plaintiffs "allege numerous incidents that, if considered individually, would be

insufficiently severe to state a claim, but considered together are sufficiently pervasive to make the work environment intimidating or hostile." Id. at 607. Furthermore, "[t]he required showing of severity or seriousness of the harassing conduct varies inversely with the pervasiveness or frequency of the conduct." Ibid. (quoting Ellison v. Brady, 924 F.2d 872, 878 (9th Cir. 1991). Thus, for example, the Supreme Court held that "a single utterance of an epithet can, under particular circumstances, create a hostile work environment." Taylor v. Metzger, 152 N.J. 490, 501 (1998).

Regnenye was Farrell's supervisor and could not quantify the number of times he referred to Farrell as "old man." Other employees corroborated Regnenye's harsh treatment towards Farrell, as well as his reference to Farrell as "old man." During the same time period, Farrell's work performance declined, although in prior years, under different supervisors, he received favorable reviews. We are satisfied a reasonable jury could conclude that Regnenye's treatment towards Farrell would not have occurred but for Farrell's age and that his conduct towards Farrell was sufficiently pervasive or severe to lead a reasonable person of Farrell's age to conclude that the conditions of his employment had been altered. Lehmann, supra, 132 N.J. at 603-04.

Regnenye was defendant's immediate supervisor. He controlled the day-to-day working environment to which Farrell was subjected, and TRU delegated to Regnenye the authority that enabled him to engage in the harassing conduct. Therefore, TRU may be found to be vicariously liable for Regnenye's conduct. Guines v. Bellino, 173 N.J. 301, 312-13 (2002) (citing Lehmann, supra, 132 N.J. at 619).

Insofar as Regnenye's individual liability, such liability may be found if he aided or abetted the discrimination or harassment at issue. Tarr v. Ciasulli, 181 N.J. 70, 83 (2004), aff'd, 194 N.J. 212 (2008). Farrell contends other employees at TRU contributed to the hostile work environment by repeatedly calling him "old man." The trial court credited evidence from Regnenye's testimony that "old man" was said with a positive connotation. In doing so, the court departed from its obligation to view the facts in the light most favorable to plaintiff and made credibility assessments, which is the function of the jury. DeWees v. RCN Corp., 380 N.J. Super. 511, 522-23. Moreover, as a supervisor, a jury could reasonably conclude TRU employees were either directly or indirectly encouraged to refer to Farrell as "old man" by Regnenye's conduct. Orozco, in his deposition testimony, confirmed that Regnenye referred to Farrell as the "old man," even when Farrell

was not present. While the record does not contain specific evidence of direct instances where Regnenye actively encouraged other employees to call Farrell "old man," a supervisor's continuous reference to an employee as "old man" could have the effect of encouraging subordinates to follow suit. Taylor, supra, 152 N.J. at 503-04.

In short, we are satisfied genuinely disputed issues of material fact existed as to whether defendants subjected plaintiff to a hostile work environment, in violation of the LAD. Therefore, the court erred in granting summary judgment on this claim.

IV.

Farrell next argues that the trial court erred in dismissing his claim that his termination was unlawful retaliation for his complaints against Regnenye. It is unlawful for an employer

> to take reprisals against any person because that person has opposed any practices or acts forbidden under this act or because that person has filed a complaint, testified or assisted in any proceeding under this act or to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this act.
>
> [N.J.S.A. 10:5-12(d).]

"To establish a prima facie case of discriminatory retaliation, [a] plaintiff[] must demonstrate that: (1) [he] engaged in a protected activity known by the employer; (2) thereafter [his] employer unlawfully retaliated against [him]; and (3) [his] participation in the protected activity caused the retaliation." Craig v. Suburban Cablevision, 140 N.J. 623, 629-30 (1995) (emphasis removed). If a plaintiff can establish a prima facie case of retaliation, "the defendant must articulate a legitimate, non-retaliatory reason for the decision. Thereafter, the plaintiff must come forward with evidence of a discriminatory motive of the employer, and demonstrate that the legitimate reason was merely a pretext for the underlying discriminatory motive." Romano v. Brown & Williamson Tobacco Corp., 284 N.J. Super. 543, 549 (App. Div. 1995) (citations omitted).

As TRU notes, Farrell fails to address how the court erred in dismissing Count III of the complaint, in which he alleged that his transfer to TRU's Union store was in retaliation for his complaints to HR about Regnenye. We decline to address an issue not briefed. See R. 2:6-2(a)(5); Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011) (holding "[a]n issue not briefed on appeal is deemed waived").

As to the retaliation claim set forth in Count V, Farrell also alleges his termination in March 2010 constituted unlawful retaliation for his complaints against Regnenye. The motion judge determined that Farrell established a prima facie case of retaliatory discharge, which required TRU to produce evidence of a non-discriminatory reason for his termination. Romano, supra, 284 N.J. Super. at 549.

TRU proferred seven separate pieces of evidence as proof that Farrell's termination was performance-based. These included: (1) the Corrective Action Farrell received on January 18, 2008, two months prior to his original complaint; (2) a performance memo issued to Farrell dated July 8, 2008, which states multiple performance deficiencies; (3) an August 2008 Performance Action Plan, which states Farrell's "performance is below expectations and must improve;" (4) an August 21, 2009 Corrective Action issued to Farrell; (5) a December 10, 2009 Corrective Action issued to Farrell; (6) a December 15, 2009 Corrective Action issued to Farrell; and (7) Farrell's 2009 Annual Evaluation which stated he was performing below expectations. These evaluations were prepared by at least three different supervisors.

Farrell contends that the corrective action taken does not negate a discriminatory animus. Instead, Farrell urges that the

corrective actions taken against him, after he filed his complaint, support his claim of retaliation. He references a September, 2007 evaluation stating that he always performed his job well, and asserts that the reports showing poor performance and disciplinary actions did not start until shortly after he filed his discrimination complaint in 2008.[4]

The motion judge, in dismissing this claim, noted that "the disciplinary actions taken after [Farrell] made his complaint and was transferred to the Union store were issued by three different managers, all of whom were older than [Farrell]." Farrell, however, is not claiming he was subjected to retaliation because of his age. Rather, he claims he was the victim of retaliation after he filed his discrimination complaint. We are nonetheless persuaded the motion judge properly granted summary judgment dismissing this claim.

Farrell was terminated along with seventy-four other assistant store managers, all of whom, like Farrell, had either received "below expectations" evaluations or had not been with TRU for more than a year. Farrell was consistently informed

[4] The record reflects otherwise. Farrell was demoted from manager-in-training to assistant manager in 2006. No reason is provided in the record as to why he was demoted in 2006. He also received a Corrective Action on January 18, 2008, two months to the day before he initiated his complaint against Regnenye.

between 2008 and 2010 that his performance was poor, and he was given many opportunities to correct his deficiencies. Three different superiors independently provided negative reviews of his performance. Farrell does not contest the specific allegation that he failed to secure $24,000 and $37,000 on two separate occasions after being placed on Level 3 Corrective Action on December 15, 2009.

In addition, as defendants note, Farrell downgraded his own performance in his 2009 review, as he gave himself a score of "meets expectations" compared to the "above expectations" rating he gave himself the previous year. This constitutes undisputed evidence that Farrell acknowledged a change in his performance in the year leading up to his termination. Thus, the facts here are not so "unusually suggestive of retaliatory motive" to establish a causal link between plaintiff filing a complaint against defendant in 2008 and his termination in 2010. Young v. Hobart W. Group, 385 N.J. Super. 448, 467 (App. Div. 2005). Nor is there temporal proximity to the protected activity and his subsequent termination. Ibid. (noting that although not dispositive, the absence of temporal proximity is a factor to consider).

In short, Farrell failed to produce sufficient evidence to rebut defendants' proffered legitimate explanation for his

termination. Consequently, TRU was entitled to summary judgment, dismissing Farrell's retaliation claim as a matter of law. Romano, supra, 284 N.J. Super. at 551.

V.

Farrell asserts the trial court erred in finding that New Jersey's LAD pre-empted his common law claim for intentional infliction of emotional distress. We agree, but conclude summary judgment was properly granted for a different reason.

In Taylor, supra, the Court recognized that the LAD does not bar a separate, common-law claim for intentional infliction of emotional distress but that a "plaintiff is precluded from obtaining a double recovery." 152 N.J. at 509. In order to prevail on a claim for intentional infliction of emotional distress, "'the conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and be regarded as atrocious, and utterly intolerable in a civilized community.'" Ibid. (quoting Restatement (Second) of Torts § 46 cmt. d).

Farrell obtained an expert report from a psychiatrist, Dr. Gregory S. Rasin, who diagnosed him as suffering from generalized anxiety disorder and dysthemic disorder (chronic depression). The doctor recommended treatment, which Farrell claimed he could not afford. The events giving rise to

Farrell's claim commenced as early as the fall of 2007 when Regnenye became his supervisor and immediately displayed his dislike towards him and continued until, at the latest, his termination in 2010. There is no record of any medical or psychiatric treatment throughout this time period.

Farrell's claims of generalized anxiety and chronic depression, for which he received no treatment, are conditions insufficient to sustain a claim for intentional infliction of emotional distress. Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355, 368 (1998) (rejecting the plaintiff's complaints of headaches, embarrassment, aggravation and loss of sleep as a basis to recover damages for intentional infliction of emotional distress). To survive summary judgment, what is required is proof of "intentional and outrageous conduct by a defendant" which proximately causes emotional distress to a plaintiff that is "'so severe that no reasonable [person] could be expected to endure it.'" Tarr, supra, 181 N.J. at 77; (quoting Buckley, supra, 111 N.J. at 366 (quoting Restatement (Second) of Torts § 46 cmt. j at 77 (1965))). Repeated references to Farrell as "old man," while offensive, can hardly be viewed as the equivalent of extreme and outrageous conduct sufficient to sustain a common law cause of action for intentional infliction

of emotional distress. 49 Prospect St. Tenants Ass'n v. Sheya Gardens, 227 N.J. Super. 449, 472 (App. Div. 1988).

VI.

Farrell next argues that the trial court erred in dismissing Count IV of the complaint after finding that he did not have standing to assert third-party retaliation claims based on the termination of three TRU employees who were his corroborating witnesses. We disagree.

Farrell relies upon Thompson v. N. Am. Stainless, LP, 131 S. Ct. 863, 178 L. Ed. 2d 694 (2011) as a basis to establish his standing to assert his claim on behalf of his co-workers' protected conduct. Thompson is factually distinguishable. There, the plaintiff's fiancé filed a sex discrimination charge with the EEOC, and the plaintiff was fired soon after. Id. at 867. The court ruled that the plaintiff had standing to assert a retaliation claim under Title VII even though he was not the individual who complained of sex discrimination because he claimed his termination was in retaliation for his fiancé filing the EEOC claim. Id. at 870. Farrell is the only aggrieved party in the present action. His claims are limited to those pertaining to him.

VII.

Finally, in his third amended complaint, Farrell alleges that defendants' conduct constitutes disparate treatment. In seeking summary judgment, TRU did not specifically address this claim, confining its brief and oral argument to plaintiff's claims of hostile work environment and retaliation. The trial court nonetheless dismissed this claim without setting forth its reasons for doing so. We have previously emphasized that "an articulation of reasons is essential to the fair resolution of a case." Schwartz v. Schwartz, 328 N.J. Super. 275, 282 (App. Div. 2000); see also R. 1:7-4(a). The failure to provide such reasons generally precludes meaningful appellate review. Raspantini v. Arocho, 364 N.J. Super. 528, 532 (App. Div. 2003). We therefore reverse the dismissal of Farrell's disparate treatment claim. Because defendants did not formally seek dismissal of this disparate treatment, upon remand, they are not precluded from seeking such relief, since we make no determination on the merits of this claim.

Affirmed in part, reversed in part. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION