SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2798-20

LAUREN BOUZIOTIS,

Plaintiff-Appellant,

v.

IRON BAR, LLC, and DARRELL REMLINGER,

Defendants-Respondents.

Submitted March 28, 2022 – Decided April 19, 2022

Before Judges Mayer, Natali, and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-2362-18.

David H. Kaplan, attorney for appellant (Randi S. Greenberg, on the brief).

Castronovo & McKinney, LLC, attorneys for respondents (Thomas A. McKinney and Michael K. Fortunato, of counsel and on the brief).

PER CURIAM

Plaintiff Lauren Bouziotis appeals from a May 3, 2021 order granting summary judgment to defendants Iron Bar, LLC (Iron Bar) and Darrell Remlinger (Remlinger) and dismissing her complaint against defendants alleging violations of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50. We affirm.

The facts are taken from the summary judgment record and are detailed at length in a May 3, 2021 written decision by Judge William J. McGovern, III. We provide a summary of the facts.

Plaintiff worked part-time as a bartender for Iron Bar from September 2016 to May 2018. Approximately eighty percent of the bartenders working at Iron Bar were female. Remlinger, a part owner of Iron Bar, was responsible for the bar's daily operations, including scheduling. Dave Monllor worked as the general manager of Iron Bar and reported to Remlinger.

During her deposition, plaintiff described the atmosphere at Iron Bar. According to plaintiff, the staff frequently joked around because "[i]t's a bar, it's supposed to be fun."

The genesis of plaintiff's claims against defendants stem from a series of names Remlinger called plaintiff. Instead of using plaintiff's proper name,

Remlinger called plaintiff names used to describe a person with an oversized posterior.[1] She asserted Remlinger used the alternate names rather than her given name when he set Iron Bar's weekly work schedule. She also contended Remlinger wrote the alternate names on approximately six out of forty pay envelopes plaintiff received.

At Iron Bar, plaintiff worked Friday and Saturday nights, which were the bar's busiest evenings and most coveted shifts. Although plaintiff asked Remlinger if she could work Thursday night shifts, she did not receive those shifts. Instead, plaintiff claimed less experienced male bartenders worked on Thursday nights. However, the record shows female bartenders regularly worked Thursday night shifts. Additionally, when an employee, male or female, was unavailable to work on a Thursday night, plaintiff often substituted for the absent employee. According to her deposition testimony, plaintiff worked at least one Thursday night per month at Iron Bar.

In February 2017, plaintiff complained to Monllor about Remlinger using the alternate names rather than calling her Lauren. Plaintiff estimated she

[1] For purposes of this opinion, we deem it unnecessary to use the alternate names Remlinger called plaintiff. We use the phrase "alternate names" in lieu of the actual names spoken by Remlinger.

complained to Monllor over thirty times over the course of a year, but nothing changed. Plaintiff admitted never asking Remlinger to call her Lauren.

In May 2018, plaintiff submitted a letter of resignation and gave Iron Bar two weeks' notice. Her resignation letter did not provide a reason for leaving Iron Bar. Nor did the resignation letter mention any harassment or gender discrimination. Plaintiff claimed to have told Iron Bar's general manager she could no longer tolerate Remlinger referring to her by the alternate names. At deposition, plaintiff testified Remlinger's use of the alternate names did not interfere with her work and did not change the conditions of her employment at Iron Bar.

While employed at Iron Bar, plaintiff did not seek any other jobs. Standing five foot, two inches tall and weighing one hundred and ten pounds, plaintiff did not consider herself overweight or fat. Nor did she consider her posterior oversized. However, plaintiff testified Remlinger's name-calling caused her to become self-conscious about her body image, prompting her to join a gym, treat with a psychologist, and take medication for anxiety and depression.

Plaintiff's coworkers submitted certifications in support of defendants' motion for summary judgment. In separate certifications, five employees of Iron

Bar, three men and two women, described plaintiff's inappropriate conduct while working at the bar. According to plaintiff's coworkers, plaintiff routinely made vile comments and used vulgar language at work. The employees certified plaintiff's behaviors while working at the Iron Bar included cursing, telling sexual jokes, dancing inappropriately, and posing in provocative pictures with co-employees at Iron Bar. Remlinger, often the target of plaintiff's own inappropriate name-calling, considered plaintiff's comments to be in jest. When asked about her workplace behaviors and specific instances of her own inappropriate conduct at Iron Bar, plaintiff testified she did not recall.

From the record, we discern the parties are familiar with the pejorative language and boorish conduct pervading Iron Bar's atmosphere. According to the undisputed facts of record, plaintiff frequently used inappropriate language while working at Iron Bar. Some of the language and name-calling invoked by plaintiff was worse than anything uttered by Remlinger.

In her complaint, plaintiff asserted discrimination and wrongful termination, hostile work environment, retaliation, and aiding and abetting harassment. Judge McGovern granted summary judgment to defendants, finding plaintiff did not establish a prima facie case of discrimination and wrongful termination, hostile work environment, or retaliation. As a result, the judge

dismissed plaintiff's aiding and abetting harassment claim against Remlinger and vicarious liability claim against Iron Bar.

In viewing the facts in the light most favorable to plaintiff and considering plaintiff's own deposition testimony, Judge McGovern found no reasonable jury could conclude plaintiff established a prima facie case of discrimination under the LAD as asserted in Count I. Specifically, the judge determined plaintiff failed to show the conduct would not have occurred but for plaintiff's gender. Male and female employees working at the Iron Bar routinely called each other by names describing a person with a large posterior rather than using the employee's actual name.

Additionally, Judge McGovern found the record "devoid of any evidence to suggest that an adverse employment action was taken against [p]laintiff." To the contrary, the judge found "[p]laintiff voluntarily ceased her employment with Iron Bar and took another bartending job closer to her home." After tendering the letter of resignation, the judge noted plaintiff continued to work at Iron Bar for the two week notice period "and was not terminated." He determined no reasonable jury "could possibly conclude that [d]efendants' conduct was of such an egregious nature to rise to the level of being intolerable

such that a reasonable person would be forced to resign rather than continue to endure it."

In dismissing plaintiff's hostile work environment claims in Count II, the judge explained those claims suffered the same lack of proof as plaintiff's allegations in Count I of her complaint. Specifically, Judge McGovern found "[t]he record makes clear that [plaintiff] was a participant in much of the complained of conduct, engaging in much of the same language that [p]laintiff now complaints of."

In dismissing Count III, alleging retaliation under the LAD, Judge McGovern found plaintiff admitted in her deposition that she suffered no adverse employment action. Plaintiff presented no evidence she was terminated, demoted, or constructively discharged from Iron Bar. Based on the evidence, the judge concluded plaintiff voluntarily resigned and took a bartending job closer to her home.

Because the judge found plaintiff's LAD claims failed as a matter of law, he correctly dismissed plaintiff's vicarious liability and aiding and abetting claims contained in Count IV of the complaint.

On appeal, plaintiff argues the motion judge improperly substituted his judgment for that of the trier of fact. Plaintiff also claims she established a

prima facie case of a hostile work environment and gender-based discrimination, culminating in constructive termination. Further, plaintiff argues Iron Bar is vicariously liable for failing to address Remlinger's use of the alternate names when referring to her.

We disagree and affirm for the reasons stated in Judge McGovern's twenty-five-page written decision. We add the following comments.

We review the ruling on a summary judgment motion de novo, applying the same standard governing the trial court. Conley v. Guerrero, 228 N.J. 339, 346 (2017) (citing Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016)). Summary judgment will be granted when "the competent evidential materials submitted by the parties," viewed in the light most favorable to the non-moving party, show that there are no "genuine issues of material fact" and that "the moving party is entitled to summary judgment as a matter of law." Grande v. Saint Clare's Health Sys., 230 N.J. 1, 23-24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)); accord R. 4:46-2(c). If "the evidence 'is so one-sided that one party must prevail as a matter of law,'" summary judgment is appropriate. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). However, we review issues of law de novo. RSI Bank v.

Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (quoting Templo Fuente, 224 N.J. at 199).

We reject plaintiff's contention there were genuine issues of material fact precluding the entry of summary judgment. Plaintiff produced no evidence or facts upon which a reasonable jury could conclude defendants violated the LAD under the idiosyncratic facts in this case.

Instead of citing any contrary evidence, plaintiff seeks to deflect the unrefuted facts in the record by suggesting the judge viewed her allegations from a male vantage point and thus failed to give due consideration to the evidence. Plaintiff's aspersions regarding the judge's male perspective of the evidence are without basis. The judge engaged in a detailed and thorough analysis of the evidence based on the motion record.

In his summary judgment decision, the judge focused predominantly on plaintiff's own deposition testimony. During her deposition, plaintiff admitted participating in certain uncouth behaviors at Iron Bar. Yet, she failed to recall specific instances where she instigated or participated in boorish conduct and inappropriate name-calling at Iron Bar when questioned about those behaviors during her deposition. Nor did plaintiff submit affidavits or certifications from Iron Bar employees refuting the certifications of five Iron Bar employees who

witnessed and described plaintiff's own unacceptable conduct and vulgar name-calling while working at Iron Bar. Viewing the evidence in the light most favorable to plaintiff, we agree with Judge McGovern that there are no "genuinely disputed issues of [material] fact" with respect to plaintiff's claims, and defendants are entitled to summary judgment "as a matter of law." Troupe v. Burlington Coat Factory Warehouse Corp., 443 N.J. Super. 596, 601 (App. Div. 2016) (citing Brill, 142 N.J. at 540).

Turning to the merits, Judge McGovern properly found plaintiff failed to present evidence upon which a jury could reasonably conclude defendants violated the LAD.

To prove a hostile work environment claim, a plaintiff must "demonstrate that 'the complained-of conduct (1) would not have occurred but for the employee's gender; and it was (2) severe or pervasive enough to make a (3) reasonable woman believe that (4) the conditions of employment are altered and the working environment is hostile or abusive.'" Griffin v. City of East Orange, 225 N.J. 400, 413-414 (2016) (quoting Lehmann v. Toys 'R' Us, 132 N.J. 587, 603-04 (1993)). Determining the severity or pervasiveness of the conduct:

> requires an assessment of the totality of the relevant circumstances, which involves examination of (1) "the frequency of all the discriminatory conduct"; (2) "its severity"; (3) "whether it is physically threatening or

> humiliating, or a mere offensive utterance"; and (4) "whether it unreasonably interferes with an employee's work performance."
>
> [Godfrey v. Princeton Theological Seminary, 196 N.J. 178, 196 (2008) (quoting Green v. Jersey City Bd. of Educ., 177 N.J. 434, 447 (2003)).]

Here, plaintiff is unable to satisfy the first prong under Lehmann because Remlinger's use of the alternate names was gender neutral. It is undisputed that Remlinger used the alternate names when addressing both men and women working at Iron Bar. Plaintiff also conceded Remlinger's use of the alternate names was not gender specific. Additionally, Iron Bar employees routinely referred to each other by the alternate names rather than their proper names.

Even if plaintiff had satisfied the first prong under Lehmann by demonstrating impermissible conducted based on her gender, in determining whether the conduct created a hostile work environment, "the harassing conduct itself must be evaluated . . . ." Id. at 197 (quoting Lehmann, 132 N.J. at 606). "[A] hostile work environment discrimination claim cannot be established by . . . comments which are 'merely offensive.'" Mandel v. UBS/Painewebber, Inc., 373 N.J. Super. 55, 73 (App. Div. 2004) (quoting Heitzman v. Monmouth Cty., 321 N.J. Super. 133, 147 (App. Div. 1999)). Employees are "not entitled to a perfect workplace, free of annoyances and colleagues [they find] disagreeable."

Herman v. Coastal Corp., 348 N.J. Super. 1, 23 (App. Div. 2002) (quoting Lynch v. New Deal Delivery Serv. Inc., 974 F. Supp. 441, 452 (D.N.J. 1997)).

In reviewing Remlinger's alternate names for plaintiff, under the totality of the circumstances, Judge McGovern correctly concluded the name-calling did not amount to severe or pervasive conduct consistent with case law. See Faragher v. City of Boca Raton, 524 U.S. 775, 787-88 (1998) (holding that merely offensive rudeness, teasing, and offhand comments do not amount to a hostile work environment); see also Heitzman, 321 N.J. Super. at 147 ("An employment discrimination law such as the LAD is not intended to be 'a "general civility" code' for conduct in the workplace.").

While Remlinger's referring to plaintiff by the alternate names was loutish, Judge McGovern correctly applied the case law, assessing the frequency and the severity of the alternate names directed to, and uttered by, other employees at Iron Bar. He also appropriately considered the conduct of all employees at Iron Bar. Further, based on the evidence in the record, Judge McGovern found nothing indicating the use of the alternate names at Iron Bar unreasonably inferred with plaintiff's work performance. While the name-calling by Iron Bar employees may have been crude and childish, plaintiff uttered epithets directed to her fellow employees far more vulgar and

unacceptable than anything Remlinger ever stated to anyone working at Iron Bar.

Unprofessional behavior, while inappropriate, differs from the discriminatory acts actionable under the LAD. See Oakley v. Wianecki, 345 N.J. Super. 194, 203 (App. Div. 2001). Insults and impolite comments, as evident here, are generally insufficient to establish a hostile work environment under the LAD. Taylor v. Metzger, 152 N.J. 490, 500-02 (1998). Merely offensive comments, such as referring to an employee by a word describing a large backside rather than the employee's proper name as in this case, is insufficient to sustain a hostile work environment claim. See Heitzman, 321 N.J. Super. at 147.

On this record, we are satisfied plaintiff cannot prevail on her LAD claims based on her own offensive and inappropriate conduct at Iron Bar. See Martinez v. Rapidigm, 290 Fed. Appx. 521, 525 (3d Cir. 2008) (concluding, as a matter of law, "[w]here the plaintiff contributes the same type of conduct of which he or she is complaining to the employer's work environment . . . the plaintiff [c]ould not find the work environment hostile or abusive."). Judge McGovern aptly concluded no reasonable juror could find [Remlinger's alternate names for plaintiff] to be severe and pervasive enough to make a reasonable woman believe

that the conditions of employment [were] altered and the working environment [was] hostile or abusive.

Judge McGovern's detailed analysis in his written decision granting defendants' motion for summary judgment and dismissing plaintiff's complaint with prejudice is supported by the record and governing case law. To the extent we have not addressed any of plaintiff's remaining arguments, we conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.