Circuit Court for Baltimore County
Case No. C-03-CV-23-001611

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1656

September Term, 2023

ISAAC MULAMBA

v.

THE BOARD OF EDUCATION OF BALTIMORE COUNTY

Shaw,
Ripken,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: December 13, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Isaac Mulamba, appeals an order of the Circuit Court for Baltimore County granting a motion to dismiss filed by Appellee, the Board of Education of Baltimore County. In 2023, Appellant filed a civil claim against Appellee, alleging that while employed with the Baltimore County Public Schools ("BCPS"), he had been subjected to employment discrimination based on race, national origin, sex, and age; workplace harassment; retaliation; negligent hiring; abusive/constructive discharge; intentional infliction of emotional distress; and abuse of process. Following a hearing, the court issued a memorandum opinion, finding that Appellant failed to state a claim upon which relief could be granted. Appellant timely noted this appeal. Appellant's questions presented have been rephrased[1] as follows:

1. Did the circuit court err in dismissing Appellant's employment discrimination claim based on race, national origin, sex, and age discrimination?

2. Did the circuit court err in dismissing Appellant's retaliation claim?

3. Did the circuit court err in dismissing Appellant's workplace harassment claim?

4. Did the circuit court err in dismissing Appellant's constructive termination claim?

[1] Appellant's original questions presented included "i. Whether the Appellee breached laws to the detriment of the Appellant ? (I, II, IV, V, VI)" and "ii. Whether the Appellant stated a prima facie case of retaliation based on constructive termination? (III, VII, VIII)." Appellant labeled Counts I-VIII as the following: Count I The Breach of a Legal Duty, Count II Intentional Misrepresentation, Count III Discrimination and Retaliation, Count IV Breach of Contract, Count V Liability for Intentional Torts, Count VI Negligent Misrepresentation: Breach of an Implied Contract and Gross Negligence, Count VII Hostile Work Environment, and Count VIII Constructive Termination.

5. Did the circuit court err in dismissing Appellant's intentional infliction of emotional distress claim?

We hold that the circuit court did not err, and accordingly, we affirm the judgments.

Appellant, in his brief, requests that we review several additional issues not decided by the circuit court, including Count I The Breach of a Legal Duty, Count II Intentional Misrepresentation, Count IV Breach of Contract, Count V Liability for Intentional Torts, and Count VI Negligent Misrepresentation: Breach of an Implied Contract and Gross Negligence. Maryland Rule 8-131(a) provides that, on appeal, we will not ordinarily "decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8-131(a); *see DiCicco v. Balt. Cnty.*, 232 Md. App. 218, 225 (2017). Because the circuit court was not asked to and did not make any rulings on Counts I, II, IV, V, and VI, we decline to consider the additional issues.

In his brief, Appellant, also, did not address the circuit court's dismissal of his negligent hiring or abuse of process claims. He, further, did not address his claim involving judicial impartiality, his alleged right to counsel, or his challenges to the discovery-related rulings in the questions presented section of his brief. Thus, in accordance with Maryland Rule 8-504(a)(3), we will not address arguments that Appellant failed to "set forth in the 'Questions Presented' section" of his brief. *Peterson v. Evapco, Inc.*, 238 Md. App. 1, 62 (2018) (quoting *Green v. N. Arundel Hosp. Ass'n*, Inc., 126 Md. App. 394, 426 (1999), *aff'd*, 366 Md. 597 (2001)).

BACKGROUND

Appellant, a man of Central African descent in his forties[2], accepted a job with Appellee in January 2022, within the Department of Special Education as a data analyst. Because he resided in Fairfax, Virginia, and his office space was located in Towson, Maryland, he negotiated a work-from-home agreement with the former Executive Director of Special Education. Appellant was allowed to work three days a week remotely and was assigned an office space. Sometime during his employment, Appellant offered to "share his office space with" Catherine Armstrong, a Caucasian woman, who worked part-time as an administrative assistant.

In June 2022, the Executive Director of Special Education resigned and Allison Myers, a Caucasian woman, became Appellant's supervisor. She scheduled an online meeting with Appellant and Conya Bailey, her Chief Assistant, an African American woman, to discuss the office's post-COVID-19 workplace policy and his return to the office. Appellant was also advised that his workspace had been reassigned to Ms. Armstrong and that he would be moved to a cubicle. Appellant disagreed with a return to the office, stating that his duties did not need to be completed from an office, and he had a long commute to the BCPS office location. Appellant also opposed the reassignment of his workspace. Appellant alleged that his supervisor, Ms. Myers, was dismissive of him and stated that she told him that she preferred that another data analyst, Dan Klinger, a

[2] The record presents differing statements regarding Appellant's age. The circuit court stated, in its opinion granting the motion to dismiss, that Appellant is in his sixties. Appellant, however, states that he is in his forties.

Caucasian male, perform her data requests. Under previous management, Appellant's role as a data manager included monitoring data between BCPS and the Maryland State Department of Education ("MSDE"). Appellant's "employment primarily focused on comprehending the MSDE's business rules, which included state formulas. This knowledge aided in monitoring performance metrics, supporting program evaluations, and implanting corrective actions." This responsibility also provided Appellant with "special access privileges to certain server spaces." Appellant claimed that these duties were based on an interest he shared with his former supervisor regarding the importance of such information in decision-making. For example, Appellant would track the suspension rate among minorities in BCPS schools. However, when Appellant "inquired from the team about how MSDE acquired data from BCPS, no one showed any interest." Appellant asserted in his complaint that "[t]he previous Executive Director was the only individual who expressed concern about [MSDE] outcomes." Appellant described Ms. Myers as a "typical bureaucrat" who wanted to "maintain the status quo" and did not take an interest in the MSDE data once she became Executive Director. He concluded that the meeting was an attempt "to assert female power/authority in the predominantly female workplace" and a result of Ms. Myers' preference for white employees.

There was no immediate return to work for employees as the office space was not ready. On August 12, 2022, Ms. Bailey sent a departmental email to employees advising them to continue to work remotely until further notice. Neither party indicates in the record exactly when Appellee requested its employees to return to the office. On August 25, 2022,

Ms. Bailey contacted Appellant, asking why he had not been reporting to work. He responded that he was waiting for confirmation that the office was ready for in-person work. He was then directed to return to work. Ms. Myers also mailed letters via certified mail to Appellant's residence demanding that he return to work. In response, Appellant sent a cease and desist letter to Ms. Myers asking her to communicate with him only through email.

On August 29, 2022, Appellant returned to the office and sat in his previously designated office. Ms. Armstrong had an exchange with Appellant regarding the space and she later returned with Ms. Myers, Ms. Bailey, and Ms. Claudine Daniel, an administrative assistant who was an African American woman. The four women demanded that Appellant move to his cubicle. Appellant alleges that "[a]s the commotion continued, several people began to emerge from their offices to see what was happening." Appellant refused to move and remained there for the rest of the day. He described feeling deeply embarrassed by the interaction and that he did not leave his office that day for lunch. Appellant portrayed the incident as "a total display of collective and intimidating female power[,]" and he informed the women that he would be reporting the incident to the internal Equal Employment Opportunity Office ("EEO Office"). The next day, Appellant found his belongings had been removed from the office and placed in his assigned cubicle. Appellant reported the incident to BCPS' EEO Office on September 2, 2022.

Ms. Myers scheduled an in-person meeting with Appellant for September 6, 2022. Appellant was waiting for the meeting in his cubicle when he overheard Ms. Daniel state,

"This African guy wants an office! Would he have an office in Africa? He already has a job, he should be content! Instead, he wants an office on the top." The comment was followed by laughter. During the meeting, Ms. Myers informed Appellant that she would be conducting a performance evaluation. Appellant informed Ms. Myers that he had filed a complaint with BCPS' EEO Office.

On September 12, 2022, Ms. Myers emailed Appellant to inform him that she had scheduled a disciplinary meeting for insubordination for the following day. She also informed Appellant that he had the right to bring union representation with him to the meeting. Appellant refused to attend the meeting, stating that he would not meet with anyone until he obtained an attorney of his choosing. On November 11, 2022, Appellant resigned, contending that he had no choice because of the hostile work environment.

Following his resignation, Appellant alleges that BCPS provided a negative reference to a prospective employer. A BCPS Director, Dr. Monica Hetrick, contacted Appellant regarding a career opportunity within BCPS' Office of Performance Management. Appellant alleges that Dr. Hetrick agreed to call Ms. Myers, "but she never reached back with an update." Appellant indicated that he also applied for a data analyst position with Baltimore City Public Schools in its Office of Human Capital. Appellant, after the interview process, was notified by that office that he was not "a fit for the role[.]"

On April 19, 2023, Appellant filed a complaint in the Circuit Court for Baltimore County, which was amended on May 22, 2023, and July 11, 2023. Appellee did not file an answer to the amended complaint, and on August 4, 2023, Appellee filed a motion to

dismiss. Appellant responded with an answer and a request for 244 admissions which were directed at Appellee and certain non-parties. Appellee filed a motion requesting that the court either grant a protective order, stay discovery until the motion to dismiss was ruled upon, or limit the number of requests for admission. The court granted the request for a protective order, in part, holding that the requests for admission from non-parties were not permitted under Maryland Rule 2-424(a), directing Appellee to respond to the requests for admission within sixty days, and ruling that all other discovery be stayed until the court decided on the motion to dismiss. On August 22, 2023, Appellant submitted a line accusing the court of not being impartial and stating that the sixty-day deadline was an attempt by the court to collaborate against him. Appellant also preemptively asserted that the court would not fairly evaluate Appellee's motion to dismiss. On September 4, 2023, Appellant filed a motion for summary judgment which was denied on September 25, 2023.

The circuit court held a hearing on Appellee's motion to dismiss on September 18, 2023, and, on September 29, 2023, the court issued a memorandum opinion, granting Appellee's motion to dismiss Appellant's claims. Because the court granted the motion to dismiss four days after it denied Appellant's motion for summary judgment, Appellant alleges on appeal that there was "a potential coordination between the judges for a predetermined outcome" during the process of those rulings. Appellant filed this timely appeal.

STANDARD OF REVIEW

On appeal, "[t]he standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct." *Schisler v. State*, 177 Md. App. 731, 742 (2007). A trial court may dismiss a complaint if it fails to state a claim upon which relief can be granted. *Id.* The central inquiry is whether the facts within the complaint created a legally sufficient cause of action. *Id.* at 743. This Court will "'presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom.'" *Id.* (quoting *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 72 (1998)). This standard applies equally to an amended complaint. *Id.*

DISCUSSION

I. The circuit court did not err in dismissing Appellant's claim of discrimination on the basis of race, age, sex, and national origin.

Appellant argues that he was discriminated against on the following grounds: race-based discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII"), age-based discrimination under the Age Discrimination in Employment Act ("ADEA"), age and race-based discrimination under the Maryland Fair Employment Practices Act ("MFEPA"), gender-based discrimination under Title VII and MFEPA, as well as national origin-based discrimination under Title VII and MFEPA. Appellant contends that when Ms. Myers revoked his remote work status, he was discriminated against. He further argues that "reassigning a high-ranking employee's office to a low-ranking employee [is] considered a form of a demotion." He asserts that he experienced discrimination when Ms. Myers "omitted him from the department's website, which only featured four female employees." In terms of national origin-based discrimination, he alleges that Ms. Daniel

discriminated against him when he overheard her comment referring to him as an "African guy[.]" He also alleges that Ms. Myers' stated reliance on Mr. Klinger for data requests caused him to lose prestige and established her preference for white employees.

Appellee argues the court did not err. Appellee contends that Appellant did not assert a *prima facie* case of discrimination based on race, age, sex, and national origin. While Appellee does not dispute that Appellant is a member of multiple protected classes, Appellee contends that Appellant's work performance was unsatisfactory, an adverse employment action did not occur, and there were no facts alleged to establish different treatment for those outside the protected classes.

According to Title VII, employers are prohibited from "discriminat[ing] against any individual with respect to [an employee's] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin[.]" 42 U.S.C.A. § 2000e-2(a). The MFEPA contains nearly identical language to Title VII. Md. Code Ann., State Gov't § 20-606 (2021 Repl. Vol., 2022 Supp.). We are permitted to "interpret the MFEPA consistent with its federal corollary, absent 'legislative intent to the contrary[.]'" *Doe v. Cath. Relief Servs.*, 484 Md. 640, 680–81 (2023) (quoting *Chappell v. S. Md. Hosp., Inc.*, 320 Md. 483, 494 (1990)). Maryland courts have thus applied federal frameworks in evaluating employment discrimination claims under both federal and state discrimination laws. *See Dobkin v. Univ. of Baltimore Sch. of L.*, 210 Md. App. 580, 592–93 (2013) (applying a federal framework to an MFEPA claim based on age discrimination and collecting Maryland cases that have similarly applied federal frameworks to discrimination

claims). Federal cases involving Title VII claims are also "persuasive authority in interpreting Maryland employment discrimination laws, including those that prohibit retaliation." *Romeka v. RadAmerica II, LLC*, 254 Md. App. 414, 442, *cert. granted*, 481 Md. 1 (2022), *and aff'd*, 485 Md. 307 (2023). Accordingly, we refer to federal frameworks and cases throughout this opinion in assessing Appellant's claims that involve Title VII and Maryland discrimination laws.

In order to establish a *prima facie* discrimination claim when direct evidence of discrimination is unavailable, a plaintiff must establish the following elements: (1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) different treatment from similarly situated employees outside of the protected class. *Coleman v. Md. Ct. of Appeals*, 626 F. 3d 187, 190 (4th Cir. 2010); *see also Gaines v. McDonald*, 152 F. Supp. 3d 464, 470 (M.D.N.C. 2015) ("Direct evidence is evidence that the employer announced, admitted, or otherwise unmistakably indicated that the forbidden consideration was a determining factor.") (Cleaned up). We conclude that the evidence of discrimination, in this case, is indirect as Appellee has not directly indicated that its treatment of Appellant is a result of his membership in a protected class. Neither party disputes that Appellant is a member of multiple protected classes as a man of Central African descent in his forties.

Satisfactory job performance is defined as meeting the "employer's legitimate expectations at the time of the adverse employment action." *Giles v. Nat'l R.R. Passenger Corp.*, 59 F.4th 696, 704 (4th Cir. 2023). Central to this inquiry is the perspective of the

"decision maker . . . not the self-assessment of the plaintiff." *Id.* (first quoting *Evans v. Techs. Apps. & Serv. Co.*, 80 F.3d 954, 960–61; then quoting *Smith v. Flax*, 618 F.2d 1062, 1067 (4th Cir. 1980)). In *Giles*, the plaintiff engaged in several acts of insubordination, such as refusing to complete his supervisor's requests, refusing to attend mandatory briefings, and arguing with his supervisor in front of customers. *Id.* The Fourth Circuit determined that such acts were insubordinate according to the employer's policies and concluded that the satisfactory job performance prong was unsatisfied. *Id.*

In the case of *Nerenberg v. RICA of S. Md.*, 131 Md. App. 646 (2000), we upheld the grant of an employer's motion for summary judgment in a disability discrimination case. The appellant worked at a pediatric psychiatric facility where she supervised adolescents. *Id.* at 655. Her supervisors cited a number of concerns regarding her job performance, including failing "to supervise the children more closely" after warnings, becoming "overly involved with the children she supervised," fainting spells while supervising the children, "difficulty getting some of the more willful clients to cooperate[,]" arguments with her coworkers, encouraging children to participate in games they felt uncomfortable with, and showing inappropriate movies to the children. *Id.* at 656–59. This Court stated that "[t]he employer's assessment and stated opinions about the discrimination plaintiff, and not the conflicting and often speculative opinions of the employee, her co-workers, or even her former supervisor, are relevant in determining the legitimacy of a termination decision." *Id.* at 678. We upheld the grant of the motion for

summary judgment, finding that the appellant did not meet her job requirements. *Id.* at 679–80.

In the case of *Burnett v. BJ's Wholesale Club*, 722 F. Supp. 3d 566 (D. Md. 2024), the federal district court examined whether an employee had satisfied his employer's expectations of employment in the context of a motion for summary judgment. The court explained that "[i]t is undisputed that [the] [p]laintiff was frequently absent from work, without excuse, in the days leading up to his termination. These unexcused absences, on days when Plaintiff clocked into work, were in violation of BJ's policies[.]" *Id.* at 576. As a result, the court found that "no reasonable jury could conclude that the [p]laintiff's 'performance at the time of the discharge met the legitimate expectations of his employer.'" *Id.* (quoting *Rubino v. New Acton Mobile Inds., LLC*, 44 F. Supp. 3d 616, 623 (D. Md. 2014)).

Here, the trial court dismissed Appellant's employment discrimination claim because "[a]lthough the Second Amended complaint also states that the Plaintiff was completing his required tasks, it is the decision maker's perception, not his self-assessment that is relevant . . . . Therefore, this element is not sufficiently alleged." We agree. In Appellant's amended complaint, he plainly indicated that he engaged in several insubordinate acts, including refusing to report to work in accordance with the office's in-person policy after multiple requests, refusing to move to his reassigned workspace, and failing to attend a disciplinary meeting. Appellant's perception and self-assessment, however, that he had satisfactorily performed his job duties from home is not controlling.

Instead, Appellee's categorization of Appellant's work behavior as insubordinate predominates. Based on the facts asserted in the complaint, Appellant did not establish the element of satisfactory job performance.

Appellant also did not establish a *prima facie* case that he experienced an adverse employment action. An adverse employment action is a discriminatory act on the part of the employer that adversely affects the plaintiff's "compensation, terms, conditions, or privileges of employment." *Muldrow v. City of St. Louis, Missouri*, 601 U.S. 346, 354 (2024). The plaintiff must show that the adverse employment action brought about "some harm respecting an identifiable term or condition of employment." *Id.* "The 'terms [or] conditions' phrase, we have made clear, is not used 'in the narrow contractual sense'; it covers more than the 'economic or tangible.'" *Id.* (quoting *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 78 (1998) and *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986)).

The trial court, in the present case, found that Appellant failed to establish the third element, stating that "having some work responsibilities given to another employee; being reassigned from an office to a cubicle; being 'yelled' and 'screamed' at; being excluded from a department website photo which featured four women; and being talked about by an employee . . . . are not considered adverse employment actions." We agree that such acts may have made Appellant uncomfortable and/or dissatisfied, however, he did not allege or aver in his complaint a discriminatory act that adversely affected "compensation,

terms, conditions, or privileges of employment." As we see it, Appellant's claims do not demonstrate that he experienced some harm regarding his employment status.

Turning to the fourth element, the trial court found that Appellant failed to establish that "similarly situated employees outside the relevant protected classes received more favorable treatment." We agree with the court's ruling. As we can discern from the complaint, the new in-person policy applied to *all* employees, and did not treat Appellant differently. While the return to work policy may have inconvenienced Appellant, it was a measure, developed at the end of the pandemic, to return all persons to the office. As for the office reassignment, Appellee communicated to Appellant that this change was the result of "his office being assigned to another department[.]" In his complaint, Appellant did not provide any facts pertaining to Ms. Daniel's favorable treatment of other similarly situated employees.

Appellant also claims that, under the prior director, he managed certain MSDE data that the new director did not want or request. He asserts that he lost this responsibility due to Ms. Myers' reliance on Mr. Klinger. He asserts that the approach taken by the new director was because she had a "typical bureaucrat" approach to management which was different than the previous director. Appellant averred that these circumstances establish that he was subjected to an adverse employment action. However, he did not allege that similarly situated employees outside of the protected class received different treatment under his director or as a result of her management style.

In order to establish a *prima facie* case, Appellant was required to aver four elements and he did not. We hold, therefore, that the circuit court did not err in dismissing his employment discrimination claims. The facts, as alleged, did not create a legally sufficient cause of action.

II. The court did not err in dismissing Appellant's retaliation claim.

Appellant argues that Appellee retaliated against him after he filed an internal complaint with BCPS' EEO Office. Appellant claims he experienced retaliation when Ms. Myers "announced she would perform his performance review" and "arranged a disciplinary meeting for him on grounds of insubordination." Appellant argues that Ms. Myers excluded him "from various departmental meetings" and "Ms. Myers and Ms. Bailey limited communication" with him. Appellant also contends that Appellee retaliated against him when it "provided a negative reference for [him] and he was never selected for employment by another school district." Appellant alleges that "[t]he prospective employer had made promises of employment but failed to follow through; the plaintiff was amply qualified for the role yet they chose to continue searching for another candidate." Appellant further argues that he was retaliated against when Ms. Myers "stripped [Appellant] of some of his responsibilities" in his initial meeting with her.

Appellee argues that Appellant failed to allege a cognizable retaliation claim because none of the aforementioned events are considered materially adverse employment actions. Appellee acknowledges that a negative reference might be considered a materially

adverse employment action. However, it contends that Appellant did not plead with specificity the facts establishing that Appellee provided a negative reference.

An employee bearing the burden of establishing a *prime facie* case for retaliation must allege the following: "(1) he/she engaged in a protected activity, (2) the employer took an adverse employment action against him/her, and (3) the adverse employment action was causally connected to the protected activity." *Muse-Ariyoh v. Bd. Of Educ. Of Prince George's Cnty.*, 235 Md. App. 221, 244 (2017). As previously noted, this Court is permitted to refer to federal cases in assessing Appellant's retaliation claims. *Romeka*, 254 Md. App. at 442.

Filing an employment discrimination complaint with an internal EEO department is considered a protected activity. *Edgewood Mgmt. Corp. v. Jackson*, 212 Md. App. 177, 201–02 (2013). We hold that Appellant satisfied the first element because he engaged in a protected activity when he submitted an employment discrimination complaint to the internal EEO office.

Turning to the second element, in the retaliation context, an employment action is not materially adverse "unless it constitutes an ultimate employment decision which may include acts such as hiring, granting leave, discharging, promoting, and compensating." *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 350 (2000) (cleaned up). Courts find that adverse actions resulting in a modification in salary, benefits, or responsibility generally satisfy this element. *Id.* Actions that do not fit squarely within these categories may still qualify as adverse employment actions. *Lockheed Martin Corp. v. Balderrama*, 227 Md.

App. 476, 509 (2016); *Jensvold v. Shalala,* 829 F. Supp. 131, 140 (D. Md. 1993) (holding that an employee experienced an adverse employment action where an employer relinquished daily tasks to another employee and denied her the ability to publish her work); *Holcomb v. Powell*, 433 F.3d 889, 902 (D.C. Cir. 2006) (finding that when an employee experienced "extraordinary reduction in responsibilities that persisted for years" it could lead to "objectively tangible harm").

Not every adverse action "'"that makes an employee unhappy"'" will qualify as materially adverse. *Balderrama*, 227 Md. App. at 508 (2016) (first quoting *Montandon v. Farmland Indus., Inc.*, 116 F.3d 355, 359 (8th Cir. 1997); then quoting *Smart v. Ball State Univ.*, 89 F.3d 437, 441 (7th Cir. 1996)). "Ordinary workplace strife . . . cannot constitute adverse employment action." *Matvia v. Bald Head Island Mgmt., Inc.*, 259 F.3d 261, 272 (4th Cir. 2001). "Reprimands, whether oral or written, do not *per se* significantly affect the terms or conditions of employment." *Lewis v. Forest Pharm., Inc.*, 217 F. Supp. 2d 638, 648 (D. Md. 2002); *Turner v. District of Columbia*, 383 F. Supp.2d 157, 173 (D.D.C. 2005) (quoting *Crady v. Liberty Nat'l Bank & Trust Co.*, 993 F.2d 132, 136 (7th Cir. 1993)) (stating that adverse employment actions "'must be more disruptive than a mere inconvenience or an alteration of job responsibilities'"); *Munday v. Waste Mgmt. of N. Am., Inc.*, 126 F.3d 239, 243 (4th Cir. 1997) (stating that being yelled at, ignored, or spied on by a supervisor is not considered an adverse employment action "without evidence that the terms, conditions, or benefits of . . . employment were adversely affected").

Here, the second element was not satisfied as the facts as averred did not constitute adverse employment actions: "Ms. Myers scheduled a performance review and insubordination meeting; some of his work responsibilities were taken away and given to Mr. Klinger; he had limited communication with Ms. Myers and Ms. Bailey; he was excluded from meetings; and he received a negative reference once he resigned." We agree with the trial court's findings that these events did not result in a change in Appellant's salary, benefits, or ability to advance. Moreover, we note that the reassignment of responsibilities to Mr. Klinger and the change in office space occurred *prior* to the protected activity, and thus, cannot be considered retaliation.

If Appellee did, in fact, submit a negative reference to a prospective employer after Appellant resigned, this would impact Appellant's ability to advance, thus, making it an adverse employment action. Appellant's assertion that Appellee provided negative references is based solely on the fact that he did not receive the position at BCPS or the job opening in Baltimore City Public Schools. However, Appellant did not receive any feedback from the BCPS position, and he was told, following an interview process with Baltimore City Public Schools, that he was not the best fit for the job. Because of the many factors that influence a hiring process, it would be an unreasonable inference to conclude that these rejections were the direct result of a negative reference.

Assuming, *arguendo,* that Appellee did provide a negative reference, Appellant's claim, nevertheless, fails as he did not provide a causal connection between his EEO complaint and the negative reference. A retaliation claim requires a causal connection

between the employee's protected activity and the adverse employment action. A claimant must demonstrate that his "'opposition to unlawful harassing conduct played a motivating part in the employer's decision to'" act against that employee. *Belfiore v. Merch. Link, LLC*, 236 Md. App. 32, 52 (2018) (quoting *Ruffin Hotel Corp., Inc. v. Gasper*, 418 Md. 594, 612 (2011)). Here, Appellant did not allege that a negative or inaccurate reference from Appellee was based on his EEO complaint instead of their honest assessment of his work performance. The court did not err in dismissing the retaliation claim.

III. The circuit court did not err in dismissing Appellant's workplace harassment claim.

Appellant argues that he experienced workplace harassment under Title VII and the ADEA. He argues that he was publicly embarrassed when a loud confrontation ensued between him and four of his female colleagues over an office space. In terms of harassment based on national origin, Appellant overheard a derogatory comment made by Ms. Daniel regarding his national origin.

Appellee argues that Appellant did not establish that the harassment was based on his race, age, sex, or national origin. Appellee contends that if there was harassment, it was not sufficiently severe or pervasive to alter his conditions of employment and create an abusive atmosphere.

A hostile work environment claim is based on the following: "(1) the harassment was unwelcome; (2) the harassment was based on his race or age; (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere; and (4) there is some basis for imposing liability on the employer." *Wang v.*

Metro. Life Ins. Co., 334 F. Supp. 2d 853, 862 (D. Md. 2004) (quoting *Causey v. Balog*, 162 F.3d 795, 801 (4th Cir.1998)). We reiterate that this Court is permitted to rely on federal cases in assessing Appellant's work harassment claim as it involves Title VII. *Romeka*, 254 Md. App. at 442.

Neither party disputes that the conduct of the female employees was unwelcome. The second element is not satisfied, however, as it requires proof or a claim of a "direct or inferential connection" to race. *Wang*, 334 F. Supp. at 863 (stating that harassment must go beyond "personal grievances" and cannot be loosely related to race but a result of "racial animus"). To be sure, Appellant and his co-workers had a strained relationship. However, Appellant has not alleged that the strained relationship was due to racial animus or the Appellant's age or national origin. The issues between the parties appear to be more indicative of personal grievances or differences in opinion regarding the in-person work policy and occupancy of the office space.

Assuming, *arguendo,* that Appellant did establish a direct or inferential connection between the hostile events and his race or age, his claim still fails because the harassment was not so "sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere." *Causey*, 162 F.3d at 801. The third element is analyzed under the totality of the circumstances by considering """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."" *Manikhi*, 360 Md. at 348–49 (first quoting *Beardsley v. Webb*, 30

F.3d 524, 529 (4th Cir.1994); then quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993)). The standard for proving a workplace harassment claim "is intended to be a very high one." *Jackson v. State of Md.*, 171 F. Supp.2d 532, 542 (D. Md. 2001); *Thorn v. Sebelius*, 766 F. Supp.2d 585, 601 (D. Md. 2001) (holding that a disagreement "with the management style or decisions of those who supervise[] . . . is not actionable under Title VII."). *Compare Nicole v. Grafton School*, 181 F. Supp.2d 475, 484 (D. Md. 2002) (dismissing a Title VII claim for a hostile work environment where a group of employees were called a "bunch of African fools" because the treatment was not "continuous and prolonged"), *with Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 185 (4th Cir. 2001) (holding that a racially hostile environment existed where an African American employee was constantly taunted with repugnant racial slurs).

Here, the court found that Appellant did not satisfy the third element because being "embarrassed when he was yelled at one time outside his office" was "not enough [to] establish a severe or pervasive work environment as required by the third element." We agree with the court that Appellant and his co-workers' confrontation over the office space resulted in embarrassment for Appellant. However, as noted by the trial court, there were no physical threats, and the incident was isolated. An uncomfortable but isolated incident resulting from opposition to a management decision does not constitute severe or pervasive harassment.

Appellant relies on *Pennsylvania State Police v. Suders* in asserting that he was harassed on the basis of gender. 452 U.S. 129 (2004). In *Suders*, the plaintiff, a woman,

was subject to severe harassment from her male supervisors. *Id.* at 135. Her male supervisors made comments about sex with animals and oral sex, they made obscene gestures with their genitalia in close vicinity to the plaintiff, they stated that a "village idiot" could do her job, and they hit objects to intimidate her. *Id.* The plaintiff received little assistance in submitting an internal complaint against her male supervisors. *Id.* at 135–36. In an act of retaliation, her male supervisors falsely accused the plaintiff of theft, detained her, and interrogated her. *Id.* at 136. The plaintiff filed a civil action against her employer alleging sexual harassment and constructive discharge. *Id.* at 136–37. The district court dismissed her case following a grant of the defendant's motion for summary judgment. *Id.* at 137. The Court held that the case "in its current posture, presents genuine issues of material fact concerning Suders' hostile work environment and constructive discharge claims." *Id.* at 152. In contrast, Appellant's alleged harassment involves a one-time confrontation with his female colleagues over an office space. We find that *Suders* is factually distinct from Appellant's circumstances.

Finally, current case law emphasizes the frequency of offensive comments in determining whether there was harassment and it avoids finding workplace harassment in the event of a "mere offensive utterance." *Manikhi*, 360 Md. at 348–49. Taking into account the totality of the circumstances here, Ms. Daniel's joke to other co-workers referring to Appellant as an "African guy" does not constitute harassment, even though it was an offensive utterance.

Finally, the fourth element is not satisfied as there is no basis for imposing liability against Appellee. "Employers are not automatically liable for acts of harassment levied by supervisors against subordinates." *Spriggs*, 242 F.3d at 186. However, if "an employee suffers a tangible employment action at the hands of his supervisor (or successively higher authority) as the result of prohibited discrimination, then the employer may be held liable on the premise that the supervisor acted within the scope of his agency." *Id.* Tangible employment actions "fall within the special province of the supervisor . . . . They are the means by which the supervisor brings the official power of the enterprise to bear on subordinates." *Id.* (Cleaned up). Because Appellant has not alleged sufficient facts to prove that Ms. Myers, Appellant's supervisor, subjected him to harassment or discrimination in her capacity as supervisor, there is no basis for imposing liability onto Appellee. The court did not err in dismissing the hostile workplace claim.

IV. The circuit court did not err in dismissing Appellant's constructive discharge claim.

Appellant argues that a constructive discharge occurred because Appellee failed to timely investigate and respond to his internal EEO complaint. Appellant "was concerned that if he continued in this environment, they would ultimately find a reason to terminate him or he himself might eventually snap at some point and be forced to respond to their actions in kind." He alleges that "the work environment turned extremely hostile, there were multiple retaliatory acts, ultimately leading to the plaintiff's resignation for health and safety concerns." Appellant references the following as retaliatory acts: the loss of his remote work status and his office space; the scheduling of an insubordination meeting; and

Ms. Myers and Ms. Bailey's several requests for him to return to the office. He asserts that he "had no choice but to resign for fear of his own mental health or extremely adverse consequence such as dismissal from employment."

Appellee argues that both a hostile work environment and constructive discharge must be satisfied to establish this claim. Appellee further argues that even if a hostile work environment were present, Appellant's working conditions were not so intolerable as to plead a constructive discharge claim.

A constructive discharge occurs when an employer causes working conditions "to become so intolerable that a reasonable person in the employee's place would have felt compelled to resign." *Beye v. Bureau of Nat. Affs.*, 59 Md. App. 642, 653 (1984). Intolerability in the workplace varies depending upon the circumstances of a case; however, it "is more stringent than the 'severe and pervasive' standard for hostile work environment claims." *Nnadozie v. Genesis HealthCare Corp.*, 730 F. App'x 151, 162 (4th Cir. 2018).

In the case of *Moniodis v. Cook,* 64 Md. App. 1 (1985), an employer demanded that its employees "submit to polygraph examinations regarding the inventory shortages and 'shrinkage' at certain Rite-Aid Stores[.]" *Id.* at 6. Employees who refused to complete a polygraph were either terminated or subjected to "working conditions calculated to force the[] employees to resign." *Id.* at 7. The supervisors purposefully enforced a policy that made "hour and location conditions" so unreasonable that it rendered "continued employment simply fruitless for those who refused polygraphs." *Id.* at 11. A former

manager was told in reference to an employee, "'we can't fire her outright, but what I want to do is cut her hours back until there is no longer any value for her to work here. She will become frustrated.'" *Id.* We explained that "it is precisely this subterfuge the constructive discharge doctrine is intended to thwart." *Id.; see also Williams v. Giant Food, Inc.*, 370 F.3d 423, 434 (4th Cir. 2004) (stating that being yelled at or reprimanded in front of others is not intolerable enough for a reasonable person to resign); *Munday*, 126 F.3d at 244 (finding that being ignored is not considered intolerable enough to justify resignation).

The trial court held that Appellant's work conditions did "not [rise] to the level required to meet the objectively intolerable standard." It is undisputed that Appellant experienced a change in commute length because he was required to make a round-trip commute from Fairfax, VA, to Towson, MD, four days a week. However, Appellee's four-day in-person policy applied to all workers as a standard measure at the end of the pandemic. Appellant did not describe how his employer purposefully made his employment "fruitless" as the plaintiffs did in *Moniodis*, and unlike *Moniodis*, it was not applied to a selective group as a consequence. We agree with the trial court that these facts do not establish an intolerable work environment from which Appellant was constructively discharged. The circuit court did not err in dismissing Appellant's constructive discharge claim.

V. The circuit court did not err in dismissing Appellant's intentional infliction of emotional distress claim.

Appellant argues that he experienced intentional infliction of emotional distress ("IIED") because "the daily commute was both exhausting and dangerous, and he felt that

his life was being put at risk[.]" Appellant contends that Appellee's change to his remote work status "fail[ed] to factor in simple things like distance to work, family decision-making, [and] apartment rental contracts and so forth." He argues that he experienced emotional distress during his confrontation with Ms. Myers, Ms. Bailey, Ms. Armstrong, and Ms. Daniel. He alleges that he experienced "verbal assault, harassment, humiliation, and embarrassment." He also asserts that his removal from the office space to a cubicle "[t]rigger[ed] 30 years of emotional trauma related to space conflicts/territorial disputes." Appellant stated that he sought medical assistance for his mental health after these events.

Appellee argues that there is a significantly high bar in establishing an IIED claim, noting that Maryland courts have rarely upheld such claims. Appellee further contends that Appellant's change in remote work status and the confrontation over office space do not qualify as extreme and outrageous behavior under Maryland's high standard for establishing IIED claims. Appellee argues that Appellant has not alleged with specificity that the emotional distress he experienced was severe.

A claim for IIED must satisfy all of the following elements in order to be successful: "'(1) The conduct must be intentional or reckless; (2) The conduct must be extreme and outrageous; (3) There must be a causal connection between the wrongful conduct and the emotional distress; [and] (4) The emotional distress must be severe.'" *Lindenmuth v. McCreer*, 233 Md. App. 343, 368 (2017) (quoting *Lasater v. Guttman*, 194 Md. App. 431, 448 (2010)). Each element of an IIED claim must be "pled and proved with specificity." *Manikhi*, 360 Md. at 367 (internal quotation marks omitted).

Outrageous conduct is defined as an act "'so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Lindenmuth*, 233 Md. App. at 369 (quoting *Pemberton v. Bethlehem Steel Corp.*, 66 Md. App. 133, 160 (1986)). "[M]ere insults, indignities, threats, annoyances, petty oppressions, or other trivialities" are not sufficient. *Harris v. Jones*, 281 Md. 560, 567 (1977). This Court has cautioned that such claims "should be 'used sparingly and only for opprobrious behavior that includes truly outrageous conduct.'" *Mixter v. Farmer*, 215 Md. App. 536, 548 (2013) (quoting *Hines v. French*, 157 Md. App. 536, 558 (2004)).

Turning to the first element, it is plausible that a group of employees could recklessly cause emotional distress to another employee during a confrontation about vacating an office space. However, Appellant has failed to plead the remaining elements with any degree of specificity. The trial court found that Appellant's allegations "that he was yelled at, humiliated, embarrassed, health policies were ignored, and that BCPS failed to consider the distance to work, family decision making, and rental contracts . . . . cannot be said to be extreme or outrageous." While we agree that being yelled at during a dispute over an office space can be humiliating, it is not the sort of extreme and outrageous behavior that Maryland recognizes. It was an isolated event that clearly was embarrassing and is more akin to an "annoyance" or "indignit[y]" rather than an event that "go[es] beyond all possible bounds of decency." *Harris*, 281 Md. at 567; *Lindenmuth*, 233 Md.

App. at 369. We further note that Appellee's alleged lack of consideration for Appellant's personal circumstances is not extreme or outrageous conduct.

Appellant fails to satisfy the third element because he did not clearly indicate the causal connection between the workplace events and his emotional distress aside from stating that it was related to space and territory conflicts. Turning to the fourth element, the trial court found that Appellant's assertion that "the alleged conduct triggered emotional trauma that he suffered while living in Africa" failed to establish "emotional distress severe enough to support a claim for IIED." We agree that, while Appellant experienced stress and embarrassment from these events, that, alone, does not establish severe emotional distress. After noting this appeal, Appellant described his experience at BCPS as "an extraordinary disturbance on [his] life." He stated that the "misery and losses" were so great that he would never recover. He specifically indicated that "uncompensated research" efforts and "ongoing certainty" were among his emotional harms. However, these specific instances were not included in his second amended complaint. They were a part of his appellate brief. The circuit court did not err in dismissing the intentional infliction of emotional distress claim.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.