UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LATANYA MATHEWS,

Plaintiff,

Case No. 13-cv-12587

v.

HONORABLE STEPHEN J. MURPHY, III

LAVIDA MASSAGE FRANCHISE DEVELOPMENT, INC., et al.,

Defendants.
_____/

ORDER GRANTING LAVIDA'S MOTION FOR SUMMARY JUDGMENT (document no. 24)

On June 13, 2013, Plaintiff LaTanya Mathews filed the instant complaint claiming religious discrimination by her former employer, Defendant Lavida Massage Franchise Development, Inc. ("Lavida"), in violation of Title VII of the Civil Rights Act, 24 U.S.C. § 2000e, and the Michigan Elliott-Larsen Civil Rights Act ("ELCRA"), Mich. Comp. Laws § 37.2101. Lavida filed for summary judgment on May 30, 2014. ECF No. 24. Subsequently, the Court granted Mathews leave to amend her complaint and add a defendant party, North South Investments, Inc. ("NSI"), the franchisee of Lavida. Order, ECF No. 25; Am. Compl., ECF No. 26.[1]

A practicing Christian, Mathews refused to work on Sundays. After Mathews allegedly "no showed" for a mandatory shift on Sunday, May 13, 2012, Lavida terminated her employment. Mathews maintains that Lavida treated her disparately because of her religious beliefs, and failed to accommodate her religious convictions proscribing work on

[1] Because Mathews added NSI as a defendant only after Lavida moved for summary judgment, it is premature to consider NSI a party involved in the pending motion. Should NSI wish to file for summary judgment, it may do so in accordance with Civil Rule 56. But the Court will not rule on Mathews' claims against NSI in its present order.

Sundays. Lavida has moved for summary judgment on both claims, asserting Mathews' employment was terminated for failure to abide by the employee cancellation policy. The Court, having reviewed the papers, concludes a hearing is not necessary to resolve the motion. *See* E.D. Mich. L.R. 7.1(f)(2). For the reasons stated below, the Court will grant Lavida's motion for summary judgment.

STANDARD OF REVIEW

Summary judgment is proper if there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material for purposes of summary judgment if its resolution would establish or refute "an essential element of the cause of action or defense advanced by the parties." *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984). A dispute over material facts is genuine if there is evidence upon which a trier of fact could find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). To demonstrate a fact is, or is not, genuinely disputed, both parties are required to either "cit[e] to particular parts of materials in the record" or "show[] that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). Civil Rule 56(a) serves "to dispose of cases without trial when one party is unable to demonstrate the existence of a factual dispute which, if present, would require resolution by a jury or other trier of fact." *Schultz v. Newsweek, Inc.*, 668 F.2d 911, 918 (6th Cir. 1982).

In considering a motion for summary judgment, the Court must view the facts and draw all inferences in the light most favorable to the non-moving party. *60 Ivy Street Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987). But, a mere "scintilla" of evidence is insufficient to survive summary judgment; "there must be evidence on which the jury could

reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252. The entry of summary judgment is appropriate if the nonmoving party fails to present evidence that is "sufficient to establish the existence of an element essential to its case, and on which it will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) ("[T]he burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the non-moving party's case."); *Monette v. Elec. Data Sys. Corp.*, 90 F.3d 1173, 1177 (6th Cir. 1996) (explaining the "mere existence of a colorable factual dispute will not defeat a properly supported motion for summary judgment").

BACKGROUND

Lavida Massage hired Mathews as a massage therapist and esthetician in March of 2011. Compl. ¶ 12, ECF No. 1. Mathews is a Christian and lay minister for her church. *Id.* ¶ 15. At the time of her hiring, Mathews informed Shelly Resta—who oversaw the Farmington Hills Lavida Massage facility on behalf of SRP Corporate Enterprises, Inc.—that she could not work on Sundays for religious reasons. *Id.* ¶ 16. While Lavida honored Mathews' request for a period of time, the facility eventually experienced a change in management. *Id.* ¶ 19. North South Investment assumed control and management of the franchise,[2] and Mathews asserts that for months following the change in management, she continued to work any day but Sunday. *Id*. ¶ 22. Mathews maintains she informed both Mark Davis, the Operations Manager of the Lavida Franchise, and Carly Ousterhout, the manager of Lavida of Farmington Hills, of her refusal to work on Sundays. *Id*. ¶ 21. And she

[2] Mathews claims NSI assumed control in February of 2012, see Compl. ¶ 19, although Lavida presents conflicting claims about the timing of its franchise agreement with NSI, see Mot. Summ. J. 7, ECF No. 24. Any discrepancies over the timing of NSI assuming control are immaterial to Mathews' religious discrimination claims.

argues by inference that her employment record speaks to Lavida's knowledge of her religious commitments. *Id.* ¶¶ 22, 35.

But on Mother's Day, Sunday, May 13, 2012, Mathews failed to show up for a mandatory shift and Lavida terminated her employment. *Id.* ¶ 34; Mot. Summ. J. 9, ECF No. 24; Resp. 10, 19, ECF No. 28. On June 8, 2012, Mathews filed a complaint against Lavida with the Equal Employment Opportunity Commission ("EEOC") for religious discrimination. Following the administrative rejection of her claims, Mathews received an EEOC "right to sue" letter authorizing her to proceed with a lawsuit in this Court. Resp. Mot. Amend., EEOC Charge, ECF No. 16-2.

Mathews alleges unlawful discrimination on the basis of her religion in violation of Title VII and ELCRA. Both statutes prohibit religious discrimination in employment decisions, and courts apply the same analysis in reviewing such claims. *See Sutherland v. Mich. Dep't of Treas.*, 344 F.3d 603, 614 n.4 (6th Cir. 2003); *Humenny v. Genex Corp.*, 390 F.3d 901, 906 (6th Cir. 2004).

DISCUSSION

I. Disparate Treatment

To successfully establish a claim of religious discrimination and disparate treatment, Mathews must present either direct or circumstantial evidence of discrimination. *Bartlett v. Gates*, 421 F. App'x 485, 487 (6th Cir. 2010). In the absence of direct evidence, Mathews' allegations are analyzed pursuant to the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), *as modified by Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248 (1981). Under *McDonnell Douglas*, a plaintiff makes out a prima facie case by showing: "(1) he is a member of a protected class, (2) he suffered an adverse employment action, (3) he was qualified for the position in question, and (4) he was treated

differently from similarly situated employees." *Smith v. City of Salem, Ohio*, 378 F.3d 566, 570 (6th Cir. 2004); *White v. Baxter Healthcare Corp.*, 533 F.3d 381, 392 (6th Cir. 2008) (explaining the burden of persuasion always remains with the plaintiff). A plaintiff must prove that other employees, who were "similar in all of the relevant aspects," received more favorable treatment. *Chattman v. Toho Tenax Am., Inc.*, 686 F.3d 339, 348 (6th Cir. 2012).

A prima facie showing "creates a rebuttable presumption of discrimination and requires [the employer] to articulate some legitimate, nondiscriminatory reason for taking the challenged action." *Anthony v. BTR Auto. Sealing Sys., Inc.*, 339 F.3d 506, 515 (6th Cir. 2003); *Galbraith v. N. Telecom, Inc.,* 944 F.2d 275, 280 (6th Cir.1991), *overruled on other grounds by Kline v. Tenn. Valley Auth.*, 128 F.3d 337 (6th Cir. 1997) ("A reason is legitimate for purposes of the civil rights laws if it is nondiscriminatory, even if it is mean-spirited, ill-considered, inconsistent with humane personnel policies, or otherwise objectionable."). If the employer produces a legitimate, nondiscriminatory reason, the plaintiff must demonstrate the articulated reason is a pretext for discrimination. *White*, 533 F.3d at 392.

Mathews has not produced any direct evidence of religious discrimination. Accordingly, she bears the burden of establishing a prima facie case. Lavida does not dispute that Mathews is a member of a protected class, qualified for her position, and suffered an adverse employment action. But with regard to the final prong, even viewing the evidence in the light most favorable to the plaintiff, Mathews fails to establish she was treated differently than similarly situated employees.

Mathews repeatedly asserts she never agreed to work a shift on May 13, 2012, had no knowledge of being scheduled to work, and had no obligation to notify Lavida or secure

a substitute. Resp. 15, ECF No. 28. But Mathews acknowledges that Lavida "maintains a policy whereby working on Mother's Day is 'mandatory.'" Resp. 19, ECF No. 28.[3] And although Mathews generally asserts Lavida employed other licensed estheticians, she provides neither evidence of their being similarly situated nor of disparate treatment under Lavida's employment policy.

Lavida contends that, rather than following the appropriate cancellation procedures, Mathews instead advised the receptionist that she could not make the scheduled shift. *Id.*; *see also* Resp., Ex. 6, ECF No. 28. And the failure to comply with Lavida's policies and procedures constituted a terminable offense. *Id.* at 12. Mathews provides no evidence that she followed proper cancellation procedures, or attempted to procure coverage. And she has produced no evidence that other employees who "no showed" or improperly cancelled were treated with more leniency.

Even if Mathews were to make out her prima facie case, Lavida has articulated a legitimate basis for her termination—Mathews' failure to comply with scheduling requirements and notice procedures—and Mathews provides no evidence this reason is a pretext for discrimination. *See Smith v. Northstar Dining Chesterfield*, No. 12-14311, 2014 WL 4829591, at *7 (E.D. Mich. Sept. 29, 2014) ("Crucial to the discrimination inquiry under Title VII is whether Plaintiff establishes that the defendant had a discriminatory intent or motive for taking a job-related action." (internal quotation mark and citation omitted)).

Because Mathews has not produced any evidence that she was treated differently than a similarly situated coworker who was not a member of her protected class, she has failed to establish a prime facie case of disparate treatment.

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[3] In her exhibits, Mathews includes an email from Osterhout that indicates Mathews chose the shift she preferred to work that day. *Id.*, Ex. 4.

II. Failure To Accommodate

Mathews has also characterized her claim as a failure to accommodate her religious restrictions. Under Title VII, to successful assert her accommodation claim, a plaintiff must first establish a prima facie case showing that: "(1) he holds a sincere religious belief that conflicts with an employment requirement; (2) he informed the employer about the conflicts, and (3) he was discharged or disciplined for failing to comply with the conflicting employment requirement." *Tepper v. Potter*, 505 F.3d 508, 514 (6th Cir. 2007) (quoting *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1085 (6th Cir. 1987)). If Mathews can establish a prima facie case, Lavida bears the burden of showing it could not reasonably accommodate Mathews' religious beliefs without bearing more than a de minimis cost. *Id.* ("To require an employer to bear more than a de minimis cost in order to accommodate an employee's religious beliefs is an undue hardship.").

Neither Lavida nor the Court questions the sincerity of Mathews' religious convictions. And even though Mathews neglects to detail the specifics or manner by which she informed her employer, she states in her affidavit that she informed Davis and Ousterhout of her inability to work on Sundays. *See* Resp. 3, ECF No. 28. But Mathews fails to satisfy the third prong of her prima facie case. Lavida did not terminate Mathews for simply failing to work on Sunday, May 13, 2012, but for failing to abide by the cancellation policies and improperly "no showing" for a scheduled shift. Mot. Summ. J., Davis Aff. ¶ 12, ECF No. 24-1; *see Fields v. Rainbow Rehab. Center, Inc.*, 833 F. Supp. 2d 694, 700 (E.D. Mich. 2011) (finding an employee's ability to arrange alternative accommodation meant "that Plaintiff's religious beliefs did not conflict with an employment requirement"). Mathews presents no evidence she attempted to follow Lavida's procedures for work absences, or tried to

arrange for accommodation for the particular Sunday when she did not call in.[4] Lavida mandated prior notice of staff absences to ensure its clients were not inconvenienced. Mot. Summ. J., Davis Aff. ¶11, ECF No. 24-1. Mathews failed to provide notice and her employment was terminated. Even viewing the facts in the light most favorable to Mathews, there is insufficient evidence for a reasonable jury to find Mathews established a prima facie case of failure to accomodate.

Because Mathews fails to make out the requisite prima facie case, the Court need not consider whether the cost of accommodation was de minimis. And to the extent Mathews also asserts a religious accommodation claim under ELCRA, the claim fails as a matter of law. Unlike Title VII, "ELCRA does not include an affirmative duty to accommodate an employee's religious beliefs." *Ureche v. Home Depot U.S.A., Inc.*, No. 06-cv-11017, 2006 WL 3825070, at *4 (E.D. Mich. Dec. 26, 2006).

CONCLUSION

Mathews has failed to make out the necessary prima facie case for her Title VII and ECLRA claims of disparate treatment and failure to accommodate her religious beliefs. Accordingly, the Court will grant Lavida's motion for summary judgment.

ORDER

WHEREFORE, it is hereby **ORDERED** that Lavida's Motion for Summary Judgment (document no. 24) is **GRANTED**.

SO ORDERED.

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[4] Mathews asserts she had no knowledge of the shift. The evidence indicates, however, that Mathews signed up for the shift—choosing a later shift to accommodate her church obligations—and subsequently failed to advise management she needed to cancel. Pl. Resp., Ex. 4, 6, ECF Nos. 28-5, 28-7; Def. Mot. Summ. J., Davis Aff. ¶¶ 8–10, ECF No. 24-1.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: March 24, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on March 24, 2015, by electronic and/or ordinary mail.

s/Carol Cohron
Case Manager