Order

Michigan Supreme Court
Lansing, Michigan

January 24, 2025

Elizabeth T. Clement,
Chief Justice

167365

Brian K. Zahra
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden
Kimberly A. Thomas,
Justices

RANDY JONES,
Plaintiff-Appellant,

v

SC: 167365
COA: 365920
Macomb CC: 2022-000157-CD

FCA US LLC,
Defendant-Appellee.

_____/

On order of the Court, the application for leave to appeal the June 13, 2024 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

CAVANAGH, J. (*concurring*).

I concur with the majority's order denying leave to appeal but write separately because I disagree with the Court of Appeals' holding that a supervisor twice using the n-word against an employee is insufficient to establish a prima facie claim of a racially hostile work environment. However, I agree with the Court of Appeals that plaintiff's claim is precluded because the employer did not have actual or constructive notice of plaintiff's allegations. See *Chambers v Trettco, Inc*, 463 Mich 297, 318-319 (2000); *Sheridan v Forest Hills Pub Sch*, 247 Mich App 611, 621 (2001).

Plaintiff filed this suit against defendant, his employer, alleging that he was subjected to a racially hostile work environment and retaliation both in violation of the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq*. Plaintiff, who is Black, alleged that his direct supervisor, Jeff Beyst, who is white, was responsible for creating the racially hostile work environment. The core of plaintiff's claim is that Beyst regularly called plaintiff the n-word. At his deposition, plaintiff testified that Beyst said to plaintiff on two occasions, "I got you, n****r." One of these instances occurred during a heated dispute between the two. Plaintiff alleges that he filed several harassment complaints against Beyst with Human Resources (HR), but that HR took no remedial action.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition as to his claim of a racially hostile work environment. In affirming the trial court's decision, the Court of Appeals reasoned in an unpublished opinion that the supervisor's use of the n-word only twice was insufficient to show that the supervisor's actions substantially interfered with plaintiff's employment.[1] Although I believe that the panel reached the correct outcome, I disagree that the use of the n-word by a supervisor, standing alone, can never be sufficient to constitute a racially hostile work environment.

To prevail on his claim, plaintiff must demonstrate that he experienced unwelcome conduct or communication related to his protected status and that the unwelcome conduct "was intended to or in fact did substantially interfere with [his] employment *or* created an intimidating, hostile, or offensive work environment[.]" *Radtke v Everett*, 442 Mich 368, 382 (1993) (emphasis added). Importantly, a prima facie case requires conduct that either (1) substantially interferes with employment or (2) has the purpose or effect of creating a hostile work environment. *Id*. at 385, 394. While both tests consider the perspective of "a reasonable person, in the totality of circumstances," *id*. at 394, they are discrete alternative ways to prevail in an ELCRA claim. The Court of Appeals erred by engrafting the requirement that plaintiff show substantial interference with employment where his claim was based on a hostile work environment—the crux of plaintiff's theory is that the repeated use of a racial slur by his supervisor created a hostile work environment.

While Michigan courts have not specifically addressed the isolated use of the n-word by a supervisor in the context of examining an ELCRA claim, this Court "has encouraged using as guidance federal precedent interpreting Title VII of the federal Civil Rights Act, the statute on which the ELCRA was based." *Rouch World, LLC v Dep't of Civil Rights*, 510 Mich 398, 411 (2022). Under Title VII, federal courts have consistently held that the use of the n-word—even just once—can create a hostile work environment. "Far more than a 'mere offensive utterance,' [the n-word] is pure anathema to African-Americans." *Spriggs v Diamond Auto Glass*, 242 F3d 179, 185 (CA 4, 2001). Numerous federal circuits have observed that " 'no single act can more quickly "alter the conditions of employment and create an abusive working environment" than the use of an unambiguously racial epithet such as [the n-word] by a supervisor in the presence of his subordinates.' " *Woods v Cantrell*, 29 F4th 284, 285 (CA 5, 2022) (collecting cases), quoting *Rodgers v Western-Southern Life Ins Co*, 12 F3d 668, 675 (CA 7, 1993), in turn quoting *Meritor Savings Bank, FSB v Vinson*, 477 US 57, 67 (1986). "The N-word carries

---

[1] The Court of Appeals also concluded that plaintiff failed to create a genuine issue of material fact as to whether (1) defendant had actual or constructive notice of the discrimination and (2) plaintiff engaged in protected activity where plaintiff provided no evidence that his complaints to his employer included allegations of racial discrimination. Nor did the panel determine that the harassment was pervasive enough to constitute constructive notice.

with it, not just the stab of present insult, but the stinging barbs of history, which catch and tear at the psyche the way thorns tear at the skin." *Bailey v San Francisco Dist Attorney's Office*, 16 Cal 5th 611, 631 (2024) (holding that an isolated use of the n-word may be sufficiently severe to create a hostile work environment under California's civil rights statute).

These authorities offer persuasive analysis suggesting that the Court of Appeals was incorrect in determining that "such limited usage of the offensive term" by plaintiff's supervisor was insufficient to substantiate his claims of a racially hostile work environment under ELCRA. *Jones v FCA US LLC*, unpublished per curiam opinion of the Court of Appeals, issued June 13, 2024 (Docket No. 365920), p 4. In keeping with these persuasive cases, I would hold that a direct supervisor using a racial epithet against an employee—even once—presumptively raises a genuine issue of material fact to support a racially hostile work environment theory under ELCRA. See *Ayissi-Etoh v Fannie Mae*, 404 US App DC 291, 298 (2013) (Kavanaugh, J., concurring) ("[I]n my view, being called the n-word by a supervisor . . . suffices by itself to establish a racially hostile work environment."). Here, plaintiff set forth in his deposition that his supervisor used the n-word on at least two occasions, and once during a heated exchange. I therefore disagree with the Court of Appeals that plaintiff presented insufficient evidence to establish a jury-submissible claim of a racially hostile work environment.

"[A]n employer may avoid liability in a hostile environment case 'if it adequately investigated and took prompt and appropriate remedial action upon notice of the alleged hostile work environment.' " *Chambers*, 463 Mich at 312 (some quotation marks, citations, and brackets omitted). But the employer " 'must have notice of alleged harassment before being held liable for not implementing action.' " *Id.* (citation omitted).[2]

---

[2] *Chambers* diverged from federal civil rights law, see *Burlington Indus, Inc v Ellerth*, 524 US 742 (1998); *Faragher v Boca Raton*, 524 US 775 (1998), and held that strict liability by an employer for sexual harassment by a supervisor only applied in cases of quid pro quo sexual harassment. See *Chambers*, 463 Mich at 313-316. While federal caselaw extends the same standard to cases involving supervisor harassment in quid-pro-quo and hostile-work-environment cases, *Chambers* held that with respect to a hostile-work-environment claim, even if a supervisor—an agent of the employer—is the harasser, an employee must avail themselves of the company's internal complaint process to move forward with a discrimination claim. See *id.* at 313. Justice MARILYN KELLY dissented as to both the majority's quid-pro-quo and hostile-work-environment analyses and noted that the majority's position "places the burden on employees to complain about their supervisor's sexually harassing conduct, rather than encouraging employers to take the initiative to prevent such occurrences." *Id.* at 336 (KELLY, J., dissenting).

Because I agree that plaintiff's employer was not put on notice of the discrimination, I concur in the result.

WELCH, J., joins the statement of CAVANAGH, J.