

IN THE IOWA DISTRICT COURT FOR POLK COUNTY**DEVIN MICHAEL ELLIS,****Plaintiff,****v.****STORAGE AND DESIGN GROUP, INC.,
an Iowa Corporation, and RONALD M.
PATTERSON, an individual,****Defendants.****Case No. LACL156153****ORDER ON DEFENDANTS'
MOTION FOR
SUMMARY JUDGMENT**

The above-captioned matter came before this Court for hearing on February 7, 2025. Plaintiff Devin Michael Ellis (“Ellis”) was represented by Attorney Stuart Higgins, and Defendants Storage and Design Group, Inc., and Ronald M. Patterson (collectively, “Defendants”) were represented by Attorney Christopher Stewart. After hearing the arguments of Counsel and reviewing the court file, including the briefs and evidence provided by both parties, the Court now enters the following ruling.

I. STANDARD.

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits “show there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.” Iowa R. Civ. P. 1.981(3). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). A fact issue is considered material only when the dispute surrounding said issue concerns facts which might affect the outcome of the case. *Jenkins v. Branstad*, 421 N.W.2d 130, 132 (Iowa 1988). “The requirement of a ‘genuine’ issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* The moving party has the burden to show the nonexistence

of a material fact, and the evidence must be viewed in the light most favorable to the resisting party. *Smith v. Shagnasty's, Inc.*, 688 N.W.2d 67, 71 (Iowa 2004). If the motion is properly supported, however, the resisting party “may not rest upon the mere allegations or denial in the pleadings” but “must set forth specific facts showing that there is a genuine issue for trial.” Iowa R. Civ. P. 1.981(5).

II. BACKGROUND FACTS.

The parties in this case agree on very few facts; therefore, in accordance with the standard for a motion for summary judgment, this description of the case takes the facts in the light most favorable to Ellis.

Ellis was hired as an installation crew leader for Defendants on December 22, 2021. D0044, Pl.’s Resp. to Defs.’ Statement of Undisputed Material Facts ¶ 1 (01/22/2025). As part of the hiring process, Ellis had a phone conversation with Defendant Ronald Patterson. *Id.* at ¶ 2. During this phone call, Ellis suggested that he would like his starting pay to be \$26 to \$28 per hour, to which Patterson allegedly replied, “I can do that.” *Id.* However, during the in-person interview, Patterson lowered the starting pay that he was willing to offer to \$22 per hour, stating, “Bottom line is I like you. I want you. But I don’t know you. And I have no idea that you have any abilities at all.” *Id.* Patterson also allegedly ended this encounter with, “Oh, one last thing. I need you to cut your dreadlocks.” *Id.*

Ellis states that, throughout his employment, his dreadlocks were a problem for Patterson. D0049, Pl.’s Statement of Disputed Facts at ¶ 10 (02/17/2025). On at least twenty occasions, Patterson asked him to cut his hair. *Id.* Patterson also allegedly stated that Ellis would look more professional if he cut his hair and that his hair looked like “worms.” *Id.* Defendants counter that Patterson asked all employees with long hair to cut it, but he never required them to do so. D0032,

Defs.' M.S.J. Br. at 7 (12/31/2024).

On March 25, 2022, Ellis was placed on probation. D0044 at ¶ 9. In an email to Ellis's immediate supervisor, Joe Schwarz,¹ Patterson stated that, during the meeting with Ellis where he was informed of the probation, they discussed "2 trailer backing incidents," "[l]eaving job site without completing all that the customer wanted done," "house issues with other employees," "incident with another employee requiring late arrival on a work day," and "[m]ileage pay." D0034, Defs.' App. at 65 (12/31/24). Ellis states that he was ordered to return to the office by Schwarz on the day that he allegedly left the job site without completing his work, and the issue with mileage pay was that Ellis contacted the Department of Transportation to see if Defendants' mileage pay policy was legal. D0044 at ¶ 10.

Ellis describes the "house issue with other employees" thusly:²

Ellis was staying out of town for a project. The crew included Ellis (African American), Bryant Evans (African American), Koffee Tengue (African American), Virgil Dickeson (Caucasian) and Anthony Straylee (Caucasian). Ellis was the crew leader. Ellis was trying to sleep in the primary suite that included an attached bathroom. When Ellis went to bed, he locked the door to the bedroom. Straylee insisted on using the master bathroom to shower. Ellis refused to provide access and told Straylee to use the shared bathroom . . . Straylee sent Schwarz a text message from the jobsite that said, "You know how it is with these people" or something to that nature. Joe Schwarz told Ellis that Straylee didn't want to stay with black people.

Ellis complained to Schwarz . . . that Anthony Straylee was racist and had subjected him to racially discriminatory treatment. Ellis complained to Schwarz that he did not want to work with Straylee, referring to Straylee as a "racist ass." After the incident, Straylee told Schwarz that he didn't want to work with Evans or Ellis . . . [H]e referenced that his family had been members of the Ku Klux Klan but he denied being racist. Straylee complained that the company was putting him in a volatile situation making him work with "these people". Straylee complained to Schwarz that he wanted Devin Ellis to be fired. Schwarz shared this Straylee conversation with Patterson, who told him to deal with it.

Patterson also had a conversation with Straylee about the incident. Straylee

¹ Schwarz's immediate supervisor was Patterson.

² Paragraph breaks have been added for readability.

commented to Patterson that he had ancestors or relatives who were part of the KKK. Straylee said, “I don’t know. Is that my heritage? Is that what I’m supposed to follow?” . . . Despite the fact that Straylee brought up the KKK when discussing his African American crew leader and coworkers, Patterson thought that Straylee was credible, that he was a “straight shooter.”

Id. (internal citations omitted). Patterson felt that this particular conflict with Straylee “was kind of a turning point in [Ellis’s] employment” because “he was not the guy he was hired to be” and had become “obstinate.” *Id.*

On June 14, 2022, Ellis called Schwarz and reported that he was being mistreated by the janitor on the worksite and that he thought it was racially motivated. *Id.* at ¶ 12. When Ellis returned to the shop, Patterson asked “whether he had to deal with discrimination all the time,” to which Ellis responded in the affirmative. *Id.* Patterson allegedly responded, sarcastically, “Aww, that’s too bad.” *Id.* He then pointed at Ellis’s dreadlocks and said, “We still want you, even with those.” *Id.*

Ellis also alleges a variety of other comments from Patterson that he perceived to be racially motivated. These include Patterson referring to African American employees as “monkeys” and telling them to “stop monkeying around.” D0049 at ¶ 12. Ellis states that these comments were not made to or about white employees. *Id.* At one point, Patterson met Ellis’s brother, who is white, and said that Ellis’s brother was “the better looking one.” *Id.* On another occasion, Patterson told Ellis he had attended a wedding where the groom, who is African American, was late. *Id.* Ellis felt this was an endorsement of the negative stereotype that African Americans are often late. *Id.*

Following several informal complaints to both Schwarz and Patterson about Patterson’s conduct, Ellis filed a discrimination complaint with the Iowa Civil Rights Commission (ICRC)³ on August 8, 2022. *Id.* at ¶¶ 14-19. The ICRC mailed a notice of the complaint to Defendants on

³ The agency at the time was known as the ICRC and, therefore, that name will be used in this ruling. During the pendency of this action, its name has changed to the Iowa Office of Civil Rights. *See* Iowa Code § 216.2 (2024).

August 26, 2022. *Id.* at ¶ 20.

On September 13, 2022, Ellis made a complaint of discrimination to Patterson and Schwarz, though it is not clear how exactly the complaint was made. *Id.* at ¶ 18. At some point shortly thereafter, he met with Patterson and Schwarz to discuss the complaint. *Id.* at ¶ 21. According to Ellis, during the meeting, Patterson “admitted to having made racial comments” but “tried to minimize them by saying they were jokes.” *Id.* at ¶ 26. He also pressured Ellis to admit that he is racist against white people, which Ellis denied. *Id.* at ¶ 27. Ultimately, Patterson threatened to fire Ellis and told Schwarz, “We can’t do this. We can’t have some guy trying to bring down the company.” *Id.* at ¶¶ 28-29.

On September 20, 2022, Ellis was informed of his termination by Schwarz. D0044 at ¶ 31. The circumstances surrounding the termination are disputed. Both parties agree that Ellis took his truck home for the weekend of September 18-19, 2022. *Id.* at ¶ 30. According to Defendants, Ellis had repeatedly failed to follow internal policies regarding the use of his work truck, and on this particular weekend, Ellis had taken his work truck home without authorization. *Id.* at ¶¶ 16-20, 30. Ellis contends that there was a mutual understanding with Schwarz that he needed his work truck in order to get to and from work; therefore, Schwarz knew he took the truck home on the weekends. *Id.* at ¶¶ 16, 30. According to Ellis, there had been no problems with this arrangement up until this point. *Id.* Defendants claim that neither Patterson nor Schwarz knew about the ICRC complaint prior to Ellis’s termination. *Id.* at ¶ 25.

Ellis notes several inconsistencies with the facts surrounding his termination. First, while Defendants now claim that Schwarz ultimately made the decision to fire Ellis, at the time, Schwarz told Ellis that it was Patterson’s decision. D0049 at ¶ 42. Next, Defendant’s Employee Handbook includes a progressive disciplinary policy, and Ellis argues that, pursuant to that policy, he should

have been given a verbal warning and a written warning prior to termination. *Id.* at ¶¶ 36-39. Finally, when Ellis filed for unemployment insurance benefits, Defendants claimed that Ellis voluntarily quit. *Id.* at ¶ 34. Throughout this lawsuit, Defendants have maintained that Ellis was terminated for insubordination. *Id.* at ¶ 35.

III. ANALYSIS.

Defendants have moved for summary judgment on Ellis's claims of harassment based on race and retaliation in violation of the Iowa Civil Rights Act (ICRA). They also move for summary judgment on all claims against Patterson as an individual defendant.

A. Hostile Work Environment Claim

Ellis alleges that he was subjected to harassment based on race by both a supervisor and a coworker. The Iowa Supreme Court has articulated the following standard for such a claim:

To establish a hostile work environment, the plaintiff must show: (1) he or she belongs to a protected group; (2) he or she was subjected to unwelcome harassment; (3) the harassment was based on a protected characteristic; and (4) the harassment affected a term, condition, or privilege of employment. *See Beard v. Flying J, Inc.*, 266 F.3d 792, 797 (8th Cir. 2001). Additionally, if the harassment is perpetrated by a nonsupervisory employee, the plaintiff must show the employer "knew or should have known of the harassment and failed to take proper remedial action." *Stuart v. Gen. Motors Corp.*, 217 F.3d 621, 631 (8th Cir. 2000). When a supervisor perpetrates the harassment, but no tangible employment action occurred, the employer may assert the *Faragher–Ellerth* affirmative defense to avoid liability. *Faragher v. City of Boca Raton*, 524 U.S. 775, 807, 118 S.Ct. 2275, 2293, 141 L.Ed.2d 662, 689 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765, 118 S.Ct. 2257, 2270, 141 L.Ed.2d 633, 655 (1998).

Farmland Foods, Inc. v. Dubuque Hum. Rts. Comm'n, 672 N.W.2d 733, 744 (Iowa 2003) (footnote omitted). The parties do not dispute that the first element is met, because Ellis is African American.

Unwelcomeness

Harassing conduct is unwelcome when "uninvited and offensive." *Quick v. Donaldson Co.*, 90 F.3d 1372, 1378 (8th Cir. 1996) (citing *Burns v. McGregor Elec. Indus., Inc.*, 989 F.2d

959, 962 (8th Cir. 1993)).⁴ “The proper inquiry is whether the plaintiff indicated by his conduct that the alleged harassment was unwelcome.” *Id.* (citing *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 68 (1986)). Taking the facts in a light most favorable to Ellis, he complained multiple times about conduct from Patterson and Straylee, thus indicating that the conduct was unwelcome.

Based on Race

Defendants do not appear to deny that Straylee’s conduct was based on race, but they make several arguments regarding whether Patterson’s conduct was based on Ellis’s race. For example, they state that Patterson told all of his employees to cut their hair, not just African American employees. Regardless of if that is true, the frequency of the requests, combined with comments that Ellis’s hair looked like “worms,” could lead a reasonable trier of fact to conclude that these comments were based on race. Defendants also argue that Patterson’s use of the phrase “monkeying around” is a common, race-neutral idiom. Ellis states that Patterson did not use that phrase to refer to white employees. Given this and the societal history of African Americans being referred to as “monkeys,” the Court cannot conclude that these statements were not based on race. Taking all of this together with Patterson’s general hostility toward Ellis raising issue of disparate treatment on worksites based on his race, a reasonable fact finder could conclude that Patterson’s conduct was based on Ellis’s race.

Affected a Term, Condition, or Privilege of Employment

In order for harassment to rise to the level of affecting a term, condition, or privilege of employment, the conduct must be “sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.” *Harris v. Forklift Sys., Inc.*,

⁴ While federal case law regarding Title VII is not binding on claims under the ICRA, Iowa courts have traditionally looked to federal law for guidance and have consistently used the same analytical framework. *Pippen v. State*, 854 N.W.2d 1, 18 (Iowa 2014).

510 U.S. 17, 21 (1993) (citing *Meritor*, 477 U.S. at 67). The conduct must also be both subjectively and objectively offensive, meaning the employee found the conduct offensive and a reasonable person would as well. *Id.* “The objective determination considers all the circumstances, including: (1) the frequency of the conduct, (2) the severity of the conduct, (3) whether the conduct was physically threatening or humiliating or whether it was merely offensive, and (4) whether the conduct unreasonably interfered with the employee's job performance.” *Farmland Foods, Inc. v. Dubuque Hum. Rts. Comm'n*, 672 N.W.2d 733, 744–45 (Iowa 2003) (citing *Harris*, 510 U.S. at 23).

Ellis states that Patterson commented on Ellis’s hair over twenty times and made comments about monkeys or “monkeying around” about twenty times. Twenty instances over the course of the approximately nine months that Ellis worked for Defendants averages out to about one comment every other week. The severity of this conduct is also heightened by the fact that it was coming from a supervisor two levels above him and despite his requests that Patterson stop. The use of verbiage related to monkeys to refer to African American employees is also considered by courts to be particularly severe. *E.g.*, *Green v. Franklin Nat. Bank of Minneapolis*, 459 F.3d 903, 911 (8th Cir. 2006) (finding that eight instances of a coworker using primate-related terms to refer to an African American employee over the course of three months was severe or pervasive). Patterson’s conduct also affected Ellis’s job performance, because Ellis would spend as little time in the shop as possible in an attempt to avoid Patterson. Thus, there is a triable issue regarding Defendants’ liability based on Patterson’s alleged harassment.⁵

With regard to Straylee, there appears to have only been one work trip where there were issues, so it was not pervasive. Straylee’s conduct was also not particularly severe, given that the

⁵ The Defendants do not argue the applicability of the *Ellerth-Faragher* defense for Patterson’s actions in their briefing, so the Court will not analyze it here.

more egregious alleged comments (e.g., not wanting to room with African Americans and mentioning the KKK) were not made to Ellis. *See White v. State*, 5 N.W.3d 315, 329 (Iowa 2024) (“Secondhand reports are of relatively little value in showing that White personally experienced severe or pervasive harassment . . .”). Ellis heard about these comments after the fact from other employees. For these reasons, Ellis has failed to prove as a matter of law that Straylee’s conduct amounted to actionable workplace harassment based on race.

B. Retaliation Claim

Claims of retaliation that are not supported by direct evidence use the *McDonnell Douglas* burden-shifting model set forth by the U.S. Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *E.g.*, *Couch v. Am. Bottling Co.*, 955 F.3d 1106, 1108 (8th Cir. 2020). The first step is for the plaintiff to establish a prima facie case of retaliation by showing: “(1) he or she was engaged in statutorily protected activity, (2) the employer took adverse employment action against him or her, and (3) there was a causal connection between his or her participation in the protected activity and the adverse employment action taken.” *Haskenhoff v. Homeland Energy Sols., LLC*, 897 N.W.2d 553, 582 (Iowa 2017).

While Ellis’s complaint to the ICRC was clearly protected activity, internal and informal complaints of discrimination also constitute protected activity. *E.g.*, *Channon v. United Parcel Serv., Inc.*, 629 N.W.2d 835, 862 (Iowa 2001). Ellis claims he made several complaints to both Patterson and Schwarz, specifically alleging he felt he was being treated differently because of his race. Each of these would constitute protected activity under the ICRA. The parties do not dispute that Ellis was placed on probation in March and terminated in September of 2022. Each of these clearly constitutes an adverse action.

The parties disagree as to whether Ellis can demonstrate a causal connection for the

purposes of a prima facie claim of retaliation. In order to meet this element, Ellis must show that his protected activity was a motivating factor in the adverse actions. *Haskenhoff*, 897 N.W.2d at 634 (Appel, J., concurring in part and dissenting in part); *Id.* at 602 (Cady, C.J., concurring in part and dissenting in part) (agreeing that the correct standard is “motivating factor”). Ultimately, in a retaliation claim, “[t]he burden to show a prima facie case is not difficult.” *Donathan v. Oakley Grain, Inc.*, 861 F.3d 735, 740 (8th Cir. 2017). With regard to the probation, Patterson specifically mentioned “house issues with other employees” during the meeting informing Ellis of the probation. According to Ellis, these “issues” were that a white employee did not want to room with him because of his race and that Ellis complained about this behavior. This is enough to generate an inference of retaliation for the purposes of a prima facie case. With regard to his termination, Ellis was terminated just seven days after his internal discrimination complaint and twenty-five days after the ICRC mailed notice to Defendants of Ellis’s complaint with the agency. This close temporal proximity is sufficient to create an inference of retaliation at this stage. *See Wright v. St. Vincent Health Sys.*, 730 F.3d 732, 738 (8th Cir. 2013).

Defendants’ Reasons

Once an employee has presented a prima facie case of retaliation, the burden then shifts to the employer to present a legitimate, non-retaliatory reason for their actions. *Donathon*, 861 F.3d at 740. Defendants state that “Ellis was placed on probation for the month of April due to his inability to follow procedures set forth by Storage & Design, for insubordination, and for damaging company vehicles.” D0032, Defs.’ Br. Supp. M.S.J. at 14 (12/31/2024). With regard to the termination, Defendants state the reason was Ellis’s repeated insubordination, aggressive outbursts, and misuse of company vehicles. *Id.* at 16.

Pretext

The final stage of the *McDonnell Douglas* burden-shifting process is the employee's burden to demonstrate pretext. "If the employer articulates a legitimate reason for the adverse employment action, the plaintiff may create a triable question as to retaliation by showing the employer's articulated reason was not the true reason for the adverse action." *Donathon*, 861 F.3d at 740.

In addition to the issues discussed in the prima facie case, Ellis points to several issues that have convinced the Court that there remains a triable issue on this claim. First, Patterson made several comments that could be perceived as indicating retaliation, or at least frustration, with Ellis's complaints of discrimination. Ellis states that during the September meeting with Patterson and Schwarz to discuss Ellis's complaint of discrimination, Patterson threatened to fire him and said "We can't do this. We can't have some guy trying to bring down the company." D0049 at ¶ 43. When discussing the housing situation with Straylee, Patterson said in his deposition, "This was kind of a turning point in his employment. Things were just – he was not the guy he was hired to be. He was becoming obstinate." D0034 at 10.

Second, Ellis claims that the reason given for firing him was false. He states that he had permission from Schwarz to take the truck home over the weekend and that Defendants were aware that, without it, he could not get to work. "In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose." *Smidt v. Porter*, 695 N.W.2d 9, 16 (Iowa 2005) (quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000)).

Next, it is not clear if Defendants followed their own disciplinary policies, which can be an indication of pretext. *See Young v. Warner-Jenkinson Co.*, 152 F.3d 1018, 1024 (8th Cir. 1998).

The employee handbook states that “[i]n a situation that is not so serious as to require a written report or termination, an informal verbal warning will be issued by your immediate supervisor.” D0045, Pl.’s App. at 60 (01/22/2025). It then states that the issue can be escalated to a written warning, and all warnings are added to an employee’s personnel file. *Id.* It is not clear from the record that failure to return a company vehicle constitutes an offense that would be serious enough to warrant immediate termination without any warnings, and reasonable fact finders could differ on this issue.

Finally, Defendants’ reasons for Ellis’s departure have shifted, which can also indicate pretext. *Kobrin v. Univ. of Minnesota*, 34 F.3d 698, 703 (8th Cir. 1994) (“Substantial changes over time in the employer’s proffered reason for its employment decision support a finding of pretext.”). In their interrogatory responses for this case, Defendants have stated that Schwarz made the decision to terminate Ellis for insubordination, i.e., taking the work truck without permission. When responding to Ellis’s claim for unemployment insurance benefits, however, Defendants stated that Ellis had voluntarily quit. Furthermore, Ellis alleges that, in the meeting where he was fired, Schwarz told him that it was Patterson’s decision.

It is possible that one of these issues standing alone would fail to demonstrate a triable issue of pretext; however, when taken together, a reasonable jury could find that Defendants’ reasons are pretext for retaliation and, thus, find for Ellis. Summary judgment must, therefore, be denied.

C. Patterson as an Individual Defendant

Unlike federal law, “a supervisory employee is subject to individual liability for unfair employment practices under Iowa Code section 216.6(1) of the Iowa Civil Rights Act.” *Vivian v. Madison*, 601 N.W.2d 872, 878 (Iowa 1999). When viewing the record in the light most favorable

to Ellis, Patterson was actively involved in the harassment and retaliation that Ellis alleges and, thus, could be subject to individual liability. Summary judgment is, therefore, denied.

IV. DISPOSITION.

IT IS THE ORDER OF THE COURT that Defendants' Motion for Summary Judgment is **GRANTED** with regard to the claim of a hostile work environment created by Anthony Straylee. The balance of Defendants' Motion is **DENIED**.



State of Iowa Courts

Case Number
LACL156153

Case Title
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AL
OTHER ORDER

Type:

So Ordered

Samantha Gronewald, District Court Judge
Fifth Judicial District of Iowa