IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL ACTION
Case No.: 11-2022-CA-000456-0001-XX

JULIANNA TRIKA,

Plaintiff,

v.

POOCHES OF NAPLES, INC. &
PET RETAILERS, INC.,

Defendants.
_____/

ORDER GRANTING SUMMARY FINAL JUDGMENT FOR THE DEFENDANTS

THIS CAUSE came before the Court on August 15, 2023, upon the Defendants' Motion for Summary Judgment Regarding Count I (Discrimination in Violation of the Florida Civil Rights Act). For the reasons stated below, the Motion is GRANTED.

Summary Judgment as to Count I

The Court has reviewed Defendants' May 16, 2023 Motion for Summary Judgment as to Count I, Plaintiff's July 25, 2023 Response, and Defendants' August 9, 2023 Reply. The Court has reviewed all evidence submitted by the parties. The Court also reviewed, during the August 15, 2023, hearing, the 5-second video of Lavalle touching his genitalia that is at the center of this lawsuit.

Defendants seek summary judgment on Count I on three grounds. First, Defendants assert that the incident was a single, isolated instance of misconduct that does not meet the objective prong of the "severity" test for actionable sexual harassment under the Act. Second, Defendants assert that the Plaintiff has no evidence to support her claim of "constructive discharge" as that term is understood within the meaning of the Act. Third, Defendants assert the *Faragar/Ellerth*

affirmative defense based upon Defendants having a policy against sexual harassment and a reporting procedure for handling complaints that Plaintiff unreasonably failed to take advantage of. As indicated below, the Court need only reach the first argument because the Court agrees that as a matter of law, Plaintiff's allegations and evidence fail to meet satisfy the objective prong of the "severity" test.

Facts

The Court accepts as true the following facts:

Beginning in March 2021, Plaintiff was employed part time as a sales associate at Pooches of Largo, Inc. Pooches of Largo, Inc. is a franchise of Petland and operates the Petland retail store located in Naples, Florida. Pooches of Largo, Inc. is owned by co-defendant Pet Retailers, Inc.

Plaintiff was 16 years old and a full-time high school student at all material times. Her manager was Jose Lavalle, who was 26 years old at the time.

On Sunday, May 23, 2021, Plaintiff was driving to work when she received a text message from Lavalle. She then received a phone call from Lavalle during which he told her that the text message but that she *should* open it. Trika arrived at the store to begin her shift and, while on premises, she opened the text message. The message was a 5-second video of Lavalle touching his penis.

Trika immediately left the store never to return. She did not formally quit or provide any notice prior to abandoning the job. Trika never filed a complaint with either Defendant. Trika emailed a complaint on May 26, 2021, to non-party Petland, Inc. Her complaint was forwarded to the Defendants by Petland, Inc. Upon notification, the Defendants immediately suspended Lavalle. After Defendants' investigation, Lavalle was forced to resign in lieu of termination. Trika acknowledged that she was aware of the Defendants' policies against sexual harassment and

discrimination and that, despite knowing about the Defendants' procedures for reporting complaints, she did not report the incident to Defendants.

Analysis

The Summary Judgment Standard

"[S]ummary judgment is appropriate where there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Brevard Cnty. v. Waters Mark Dev. Enters., LC*, 350 So. 3d 395, 398 (Fla. 5th DCA 2022). "[A]n issue of fact is 'genuine' only if a reasonable jury could return a verdict for the nonmoving party." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (internal quotations omitted)). "A fact is 'material' if the fact could affect the outcome of the lawsuit under the governing law." *Id.*

"The moving party bears the initial burden of identifying those portions of the record demonstrating the lack of a genuinely disputed issue of material fact." *Waters Mark Dev.*, 350 So. 3d at 398. "If the movant does so, then the burden shifts to the non-moving party to demonstrate that there are genuine factual disputes that preclude judgment as a matter of law." *Id.* "To satisfy its burden, the non-moving party must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* (quoting *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (internal quotations omitted)). "To do so, the non-moving party must go beyond the pleadings and 'identify affirmative evidence' that creates a genuine dispute of material fact." *Id.* (quoting *Crawford–El v. Britton*, 523 U.S. 574, 600 (1998)).

"In determining whether a genuine dispute of material fact exists, the court must view the evidence and draw all factual inferences therefrom in a light most favorable to the non-moving party and must resolve any reasonable doubts in that party's favor." *Waters Mark Dev.*, 350 So. 3d at 398. "Summary judgment should only be granted where the record taken as a whole could

not lead a rational trier of fact to find for the nonmoving party." *Id.* at 398-99 (quoting *Matsushita*, 475 U.S. at 587, 106 S.Ct. 1348 (internal quotations omitted)).

Count I - Sexual Harassment

"Sexual harassment in the workplace can alter the terms and conditions of employment in either of two ways. One way is if the employee's refusal to submit to a supervisor's sexual demands results in a tangible employment action being taken against her." *Hulsey v. Pride Rests., LLC*, 367 F.3d 1238, 1245 (11th Cir. 2004).[1] This is commonly known as "quid pro quo" sexual harassment. The Plaintiff does not allege a quid pro quo or anything of the sort. And as detailed below, she suffered no employment action of any kind.

"The second way for sexual harassment to violate Title VII is if it is sufficiently severe and pervasive to effectively result in a change in the terms and conditions of employment, even though the employee is not discharged, demoted, or reassigned. This is hostile work environment harassment." *Hulsey*, 367 F.3d at 1245. Plaintiff only alleges this second type of "hostile work environment" sexual harassment.

"To establish a prima facie case of a hostile work environment, [a plaintiff must] prove that she suffered harassment based on her sex that was sufficiently severe or pervasive to alter the terms and conditions of employment.

Importantly, "the objective severity of the harassment must be judged from the perspective of a reasonable person in the plaintiff's position, taking into consideration all the circumstances." *Maldonado v. Publix Supermarkets*, 939 So. 2d 290 (Fla. 4th DCA 2006). This is because "Title VII is not a federal civility code." *Mendoza v. Borden, Inc.*, 195 F. 3d 1238, 1245 (11th Cir. 1999). Whether the harassment was objectively severe enough is decided by the court, and courts consider

[1] The Parties agree that Florida FCRA claims are analyzed identically to federal Title VII claims. *See Carter v. Health Mgt. Assoc.*, 989 So. 2d 1258, 1263 (Fla. 2d DCA 2008) (noting that Florida state courts follow federal case law when analyzing the FCRA); *Harper v. Blockbuster Entertainment Corp.*, 139 F. 3d 1385, 1389 (11th Cir. 1998).

"its frequency; 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." *McMillian v. Postmaster General,* 634 Fed. Appx. 274, 276-77 (11th Cir. 2015) (internal citations omitted). "One isolated incident of sexually inappropriate behavior will not amount to actionable sexual harassment unless the incident is 'extremely serious.'" *Id.* (internal citations omitted) (emphasis added) (affirming summary judgment for employer); *Arafat v. Sch. Bd. of Broward Cty.,* 549 Fed. Appx. 872 (874) (11th Cir. 2013) (affirming summary judgment for employer and noting that a single incident of misconduct is not severe enough to meet the objective test).

For a single isolated incident to pass the objective severity standard, the incident must be "extraordinarily severe" because a hostile work environment based on a single incident is "reserved only for the most egregious conduct." *Agosto v. New York City Dep't of Educ.*, 982 F.3d 86 (2d Cir. 2020). This type of "egregious conduct" typically involves violence. *See id.* (examples of single-instance conduct that met the objective test: rape, a punch in the ribs, and spraying mace in the victim's eyes and covering him in shaving cream while he was subjected to racially offensive comments). By contrast, the conduct was not sufficiently severe where the single instance consisted of the harasser deliberately touched the victim's breasts with papers in his hand after making a crude comment about her appearance. *Id.*

For the reasons outlined below, the Court finds that the video incident alleged by Plaintiff fails to meet the objective severity standard.

The Video Incident Does Not Pass the Objective Severity Test

The evidence presented was that this incident was a single, isolated instance of misconduct by Lavalle. There is no evidence of any prior complaints or allegations against Lavalle. There was no physical contact of any kind between Lavalle and Trika; the entire incident occurred via text message when Lavalle was at his home and Trika was either in her car driving to work or at work.

The Court notes that the Parties agree that the standard for a single incident to meet the objective severity test for sexual harassment is rather high. The Parties also agree that single incident cases are, at a minimum, limited to those involving some physical contact, such as a sexual assault.

Plaintiff argued during the hearing that the issue of objective severity presents a jury question. The Court disagrees. *See Maldonado*, 939 So.3d at 294; *Mendoza*, 195 F.3d at 1246; *Fernandez v. Trees, Inc.*, 961 F.3d 1148, 1153 (11th Cir. 2020); *Branch-McKenzie*, 254 So.3d at 1013.

The Court finds that while the video incident was inappropriate and unfortunate to have occurred to a minor, it falls far below the violence and extremeness that typifies the kind of "most egregious conduct" that satisfies the "extraordinarily severe" standard required for a single incident to pass the objective severity test.

Conclusion

As indicated above, Defendants are entitled to summary judgment on Count I (FCRA).

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For the reasons stated above:

1. Defendants' Motion for Summary Judgment as to Count I is GRANTED.
2. Defendants' Motions for Summary Judgment as to the remaining counts are DENIED AS MOOT in light of Plaintiff's August 14, 2023 dismissal.
3. Defendants' Motions for Sanctions Pursuant to Section 57.105 of the Florida Statues are DENIED.
4. Defendants' Motion for Sanctions due to Spoliation is DENIED AS MOOT.
5. Plaintiff Julianna Trika SHALL TAKE NOTHING from the Defendants in this action.
6. Final Judgment is entered in favor of Defendants Pooches of Naples, Inc. and Pet Retailers, Inc. and against Plaintiff Julianna Trika.

DONE AND ORDERED, in Chambers at Collier County, Florida.

Lauren L. Brodie

eSigned by Brodie, Lauren L in 11-2022-CA-000456-0001-XX 09/12/2023 15:37:36 zt8ZQMx3

Hon. Lauren L. Brodie
Circuit Court Judge

CC: All counsel of record via e-portal.