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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2180**

Ruby Billingsley,  
Appellant,

Rubylicious Cafe, et al.,  
Plaintiffs,

vs.

City of Minneapolis,  
Respondent.

**Filed June 17, 2013  
Affirmed  
Halbrooks, Judge**

Hennepin County District Court  
File No. 27-CV-11-14147

Ruby Billingsley, Minneapolis, Minnesota (pro se appellant)

Susan L. Segal, Minneapolis City Attorney, Gregory P. Sautter, Assistant City Attorney,  
Minneapolis, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and  
Larkin, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant Ruby Billingsley challenges the district court's summary-judgment dismissal of her discrimination and retaliation claims against respondent City of

Minneapolis. She argues that the city discriminated against her on the basis of race when it repeatedly inspected and fined one of her businesses for selling tobacco to minors and that those inspections and fines, and the eventual revocation of her business licenses for failing to pay the fines, were in retaliation for her discrimination complaints related to another business she owned. We affirm.

## **FACTS**

Billingsley is the former owner of the Arcade Convenience store and Rubylicious Cafe and the former president and executive director of WE CAN DO IT, a nonprofit corporation that placed disabled individuals in supportive working environments. Billingsley is African American, as were most of her clients. Beginning in 2006, WE CAN DO IT operated a hot-dog cart on Nicollet Mall in downtown Minneapolis.

Billingsley's cart initially did not have access to electricity. But after Billingsley was told that she could not use a gas-powered unit on Nicollet Mall, the city arranged for her to have access to electricity. In 2007 and again in 2008, Billingsley complained that the cart was unable to access electricity. In both instances, the city worked with Billingsley to resolve the issue.

Police escorted the employees and hot-dog cart off Nicollet Mall on two occasions in 2006. These incidents were prompted by complaints that the cart did not display the required license and was not allowed on Nicollet Mall during the Minneapolis Municipal Farmers' Market, which operates on Thursdays during the summer. These issues were resolved, and the cart operation resumed on Thursdays.

In June 2007, a farmers' market vendor set up in the space normally used for the hot-dog cart. Billingsley complained to the police, who declined to intervene. Leanne Selander, a license inspector with the city who had interacted with Billingsley with regard to the 2006 licensing issue and the 2007 electricity issue, became involved in the dispute. Billingsley alleges that Selander was "upset" that Billingsley called the police and "accused [Billingsley] of wasting police time."

On June 27, 2007, Selander conducted a tobacco compliance check at Arcade Convenience. The cashier sold tobacco to an underage individual working with the police. Billingsley was fined \$200, but she did not pay the fine or appeal the citation.

In a letter dated July 2, 2007, Billingsley complained about the cart-location incident to the city. She alleged that the city's treatment of her and her staff was discriminatory and stated that if the treatment did not stop, she would file a charge with the City of Minneapolis Department of Civil Rights (DCR). Several days after Billingsley sent the letter, Selander required Billingsley to remove the cart from Nicollet Mall because it did not have proper insurance. Billingsley was allowed to return the cart to Nicollet Mall a few days later, once the issue was resolved.

Billingsley filed a complaint with DCR on July 13, 2007, alleging that the Minneapolis Inspections Department discriminated against her on the basis of race when she was the only vendor asked to move from her assigned location during the farmers' market and an Asian American vendor was allowed to take her place.

On November 9, 2007 and June 24, 2008, Arcade Convenience was cited for failing two more tobacco compliance checks. Billingsley was fined \$400 for the second

incident and \$600 for the third. Neither fine was paid or appealed. Billingsley did not pay the fines because she felt that the city was discriminating against her, and she did not appeal the citations because she was attempting to resolve the issue through DCR.

In June 2008, Billingsley filed three complaints with DCR for (1) retaliation by the City of Minneapolis Licensing Department in the form of the inspections and subsequent fines at Arcade Convenience because of the 2007 complaint, (2) race discrimination in relation to the cart's access to electricity by the Minneapolis Downtown Council, and (3) race discrimination in relation to the cart's access to electricity by the City of Minneapolis Licensing Department.

In December 2008, the Public Safety & Regulatory Services Committee of the Minneapolis City Council held a hearing during which the city recommended revocation of Billingsley's four business licenses based on her failure to pay the fines related to the tobacco citations. These licenses included a tobacco dealer's license, a confectionary license, a restaurant license, and a sidewalk food-cart vendor's license. The licenses were revoked effective December 20, 2008. Billingsley did not appeal the revocations, but she filed a fifth complaint with DCR alleging that the City of Minneapolis Licensing Department had retaliated against her by revoking her licenses because of the 2007 and 2008 complaints.

DCR dismissed Billingsley's race-discrimination and retaliation complaints for lack of merit. Billingsley subsequently commenced this action against the city, alleging discrimination in public services and retaliation in violation of the Minnesota Human

Rights Act (MHRA), Minn. Stat. §§ 363A.15, .17 (2012),<sup>1</sup> and Minneapolis, Minn., Code of Ordinances (MCO) § 139.40(j), (m) (2006).

The city moved for summary judgment on all claims. In opposition to the city's motion, Billingsley submitted an affidavit with a list of licenses revoked by the city and a list of fines levied by the city, noting whether the fines were paid. She argued that these lists showed that she had been treated differently because the city rarely revoked licenses for unpaid fines and because many businesses had unpaid fines but did not face revocation of their licenses. Billingsley contended that this data created a genuine issue of material fact as to whether the city's explanations for its actions were valid.

The district court granted the city's motion and dismissed the case. The district court concluded that only two of Billingsley's claims had been timely filed: (1) the allegedly retaliatory and racially motivated stepped-up inspections and imposition of fines and (2) the allegedly retaliatory revocation of Billingsley's business licenses following the inspections and unpaid fines. The district court concluded that there was an issue of fact as to whether Billingsley's allegations concerning her conflicts with the farmers' market, the cart's access to electricity, and the brief closure relating to whether the cart had proper insurance could be considered under a continuing-violation theory. The district court determined that it was appropriate to consider these incidents for the purpose of summary judgment.

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<sup>1</sup> Billingsley cited section 363A.17, which concerns discriminatory practices by a person engaged in a trade or business or in the provision of a service. The district court treated the complaint as pleading discrimination in access to public services pursuant to Minn. Stat. § 363A.12 (2012).

The district court applied the burden-shifting analysis from *McDonnell Douglas Corp. v. Green* to the race-discrimination portion of the first claim. *See* 411 U.S. 792, 93 S. Ct. 1817 (1973). It concluded that although Billingsley established a prima facie case of discrimination, she failed to present sufficient evidence that the city's articulated, non-discriminatory reasons for its acts were pretext for discrimination. The articulated reasons accepted by the district court were that (1) yearly compliance checks of tobacco licensees and fines for violations are mandated by statute and follow-up inspections are mandated by city ordinance; (2) Billingsley was never denied access to the Nicollet Mall during the farmers' market, but only asked to use the location that she had used the previous summer; (3) the city was not responsible for the provision of electricity to the Nicollet Mall; and (4) the city had an interest in ensuring that all licensed vendors were insured and only closed Billingsley's cart for a brief time to resolve the issue.

The district court noted that Billingsley's evidence regarding license revocations and fines was insufficient because it did not include any information regarding the protected status of the licensees who were allegedly treated more favorably by the city. It also noted that she submitted no comparative evidence regarding the food-cart locations, electricity, or insurance issues. The district court also examined Billingsley's race claims under a mixed-motive analysis and held that summary judgment was appropriate because Billingsley failed to present evidence that race was a substantial motivating factor behind the city's acts.

Finally, the district court applied *McDonnell Douglas* to the two retaliation claims and concluded that, although Billingsley had again established a prima facie case, she

failed to present sufficient evidence that the city’s articulated, non-discriminatory reasons for its acts were pretext for retaliatory discrimination. The district court concluded that Billingsley failed to establish a causal connection between the protected acts—her civil-rights complaints—and the adverse actions of fines, additional inspections, and ultimate revocation of her licenses. This appeal follows.

## D E C I S I O N

We review the district court’s grant of a summary-judgment motion de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). The role of the court of appeals is to “review the record to determine whether there is any genuine issue of material fact and whether the district court erred in its application of the law.” *Dahlin v. Kroening*, 796 N.W.2d 503, 504 (Minn. 2011). We view the evidence in the light most favorable to the party against whom summary judgment was granted. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). But a party cannot survive summary judgment “merely by referring to unverified and conclusory allegations in his pleading.” *Id.*

The sole issue in this appeal is whether the district court erred as a matter of law by granting summary judgment on Billingsley’s claims that (1) the city discriminated against Billingsley by inspecting and fining Arcade Convenience and (2) these inspections and fines and the revocation of Billingsley’s business licenses were done in retaliation for her complaints to DCR.

Billingsley raises a number of additional claims, including due-process and free-speech violations, fraud, entrapment, and defamation. Billingsley did not raise these

claims before the district court, and they are not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that parties may not raise new legal claims or arguments on appeal). Further, Billingsley’s briefs include exhibits that were not presented to the district court and reference evidence outside of the record. We will only consider the transcript, papers and exhibits presented to the district court. *See Minn. R. Civ. App. P. 110.01*. Accordingly, we will disregard references to evidence outside of that record. *AFSCME, Council No. 14 v. Scott Cnty.*, 530 N.W.2d 218, 222 (Minn. App. 1995), *review denied* (Minn. May 16 and June 14, 1995).

The MHRA makes it “an unfair discriminatory practice to discriminate against any person in the access to, admission to, full utilization of or benefit from any public service because of race.” Minn. Stat. § 363A.12. It also prohibits:

[A]ny individual who participated in the alleged discrimination . . . to intentionally engage in any reprisal against any person because that person . . . opposed a practice forbidden under this chapter or has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

. . . .

A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment.

Minn. Stat. § 363A.15.

The Minneapolis Code of Ordinances similarly prohibits “any person engaged in the provision of public services, because of race . . . [from] discriminat[ing] against any person, in the access to, admission to, full use of or benefit from any public service.” MCO § 139.40(J). It also prohibits any person “[from] engag[ing] in any reprisal,

economic or otherwise, because another person opposed a discriminatory act forbidden under this title, has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this title.” MCO § 139.40(m).

### ***Race Discrimination Claim***

Minnesota courts generally use the *McDonnell Douglas* framework to analyze disparate-treatment claims at the summary-judgment stage. *Monson v. Rochester Athletic Club*, 759 N.W.2d 60, 63 (Minn. App. 2009), *review denied* (Minn. Mar. 17, 2009). This framework “consists of a prima facie case, an answer, and a rebuttal.” *Id.* (quotation omitted). This analysis applies to both single- and mixed-motive arguments of discrimination. *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 624 (Minn. 1988). Here, the district court held that Billingsley established a prima facie case of discrimination and that the city provided legitimate, non-discriminatory reasons for its actions. Neither Billingsley nor the city appeals those conclusions.

But Billingsley argues that the district court erred when it concluded that she failed to meet the third step of *McDonnell Douglas*, which requires a plaintiff to show that the defendant’s legitimate, non-discriminatory reasons were a pretext for discrimination. *See Anderson*, 417 N.W.2d at 623-24. A plaintiff may “meet the burden of persuasion on the issue of pretext by a preponderance of the evidence either by persuading the trier of fact that it is more likely the defendant was racially motivated or that the defendant’s proffered explanation is unworthy of credence.” *Shockency v. Jefferson Lines*, 439 N.W.2d 715, 719 (Minn. 1989) (quotation omitted).

The only evidence that Billingsley presented in opposition to the city's summary-judgment motion was a list of licenses that had been revoked by the city and a separate list of fines levied by the city and whether the fines had been paid. This evidence did not show that Billingsley was treated more harshly than other business owners, nor does it contain a basis to persuade the district court that the city's articulated reasons for its actions were a pretext for discrimination. It does not address the city's argument that the fines and follow-up inspections were mandated by statute and city ordinance or the non-discriminatory explanations for the events involving the food cart. And it provides no support for the assertion that discrimination was a substantial motivating factor for the city's acts.

### ***Retaliation Claims***

Retaliation claims are also subject to a *McDonnell Douglas* analysis. *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 548 (Minn. 2001). In order to defeat a defendant's motion for summary judgment, a plaintiff must provide evidence of statutorily protected conduct, adverse action, and a causal connection between the two. *Id.* The district court held that Billingsley satisfied the first two elements, but failed to present evidence sufficient to show a causal connection.

Billingsley's argument in opposition to the city's summary-judgment motion on this issue relied on the same evidence that she submitted to meet her burden of persuasion on pretext in the context of her discrimination claim. Billingsley argues that she was treated more harshly than other business owners and that the city retaliated against her because of her civil-rights complaints by revoking all of her licenses for her failure to pay

the fines related to only one license. But again, even assuming that the city did treat her unusually harshly, Billingsley does not offer any evidence connecting her protected conduct to the adverse action by the city.

To the extent that Billingsley is asserting that the timing of the various events is itself evidence of retaliation by the city, that assertion is not supported by the record. The record reflects that her first letter complaining of discrimination was dated July 2, 2007, while the first tobacco inspection occurred on June 27, 2007. And there is nothing in the record to refute the city's assertion that the subsequent inspections and fines following the first violation were statutorily mandated. We therefore conclude that the district court did not err in concluding that Billingsley's evidence fails to establish a causal connection between the city's acts and Billingsley's protected conduct.

**Affirmed.**