Filed 2/11/26 Lopez v. City of Santa Ana CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

BILHAH LOPEZ,

Plaintiff and Appellant,

v.

CITY OF SANTA ANA,

Defendant and Respondent.

G064787

(Super. Ct. No. 30-2022-01282260)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila Recio, Judge. Affirmed.

Smaili & Associates, Jihad M. Smaili and Stephen D. Counts for Plaintiff and Appellant.

Everett Dorey, Seymour B. Everett, III, Samantha E. Dorey, Christopher D. Lee, James C. Truxaw and Lana Rayan for Defendant and Respondent.

Plaintiff Bilhah Lopez filed this action against her former employer, the City of Santa Ana (the City), alleging claims for disability and age discrimination, as well as other violations of the California Fair Employment Housing Act (Gov. Code, § 12900 et seq.; FEHA).[1] The trial court granted the City's motion for summary judgment, finding, among other things, the City had presented sufficient evidence showing that Lopez abandoned her employment. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Lopez was hired by the City in 1998. She initially worked in a part-time role and then as a full-time public works dispatcher.

On January 4, 2021, Lopez notified the City she was sick with Covid-19 and would not be coming to work for the next three weeks. In her deposition, Lopez testified she was hospitalized in January 2021. Lopez provided the City a disability certificate from a medical clinic indicating she would not be able to come to work from January 19 to February 22, 2021. She later provided additional disability certificates from the medical clinic extending her leave until June 1, 2021.

On June 1, 2021, a City human resources analyst sent an e-mail to Lopez and her workers' compensation attorney. The e-mail stated Lopez's last doctor's note showed her returning to work on June 1 and the City had not received an updated doctor's note. The e-mail asked Lopez to either provide an updated doctor's note or return to work the next day. Lopez did not respond with an updated doctor's note at that time and did not return to work.

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[1] All undesignated statutory references are to the Government Code.

On July 27, 2021, the City sent Lopez a letter by both e-mail and mail. The letter stated Lopez's most recent medical note excusing her from work had expired on June 1, 2021, and that Lopez was therefore on an unauthorized leave of absence. The letter asked Lopez to contact Nabil Saba, the City's executive director of public works, by August 5, 2021, and to thereafter return to work within one business day.

On August 3, 2021, Lopez forwarded to the City an e-mail from the office of her workers' compensation attorney, which attached two work status forms. One work status form was dated June 24, 2021, and indicated Lopez could return to work on that date with accommodations for no prolonged sitting (60 minutes), no prolonged standing or walking (90 minutes), and "work in a low stress environment" (taking "10 minute breaks every hour as needed"). The other work status form was dated July 22, 2021; it indicated Lopez could return to work on that date, with the same accommodations as those listed on the work status form dated June 24, 2021.

Two days later, on August 5, 2021, the City sent an e-mail to Lopez, stating it "would like to obtain clarification from your doctor regarding your work restrictions so that we can determine if the City can accommodate them before returning to work." The e-mail requested Lopez to provide her doctor's name and contact information by the next day, and it noted the City would then provide Lopez "a medical questionnaire addressed to your doctor which you can then provide to you [*sic*] doctor."

Later on August 5, 2021, Lopez forwarded an e-mail from the office of her workers' compensation attorney with the name and contact information for her doctor. That same day, the City sent an e-mail to Lopez, stating "the City would like your doctor to provide clarification so we can determine if the City can accommodate your doctor's requests." The City's e-

mail attached a supplemental medical questionnaire and asked Lopez to provide it to her doctor. The City's e-mail further stated Lopez had 14 days to provide the City with her doctor's response. The supplemental medical questionnaire noted, among other things, the City was requesting the doctor's "assistance in obtaining the information needed to explore reasonable accommodations for your patient in compliance with the requirements of" FEHA, and "[t]he City is currently engaging with your patient to discuss all reasonable accommodation." Lopez testified at her deposition that she provided the questionnaire to her doctor's office.

On August 24, 2021, the City sent a letter to Lopez both by e-mail and by mail. The letter stated it pertained to Lopez's failure to return the supplemental medical questionnaire, and it requested Lopez to return the completed questionnaire by September 7, 2021.

Approximately six weeks went by, and Lopez did not respond and did not return the questionnaire. Accordingly, on October 11, 2021, the City sent Lopez another letter, both by e-mail and mail, noting Lopez had failed to respond to two separate communication requests since August 5, 2021.[2] The letter asked Lopez to contact the City "immediately regarding the status of your supplemental medical questionnaire and your interest in continuing to engage in the interactive process." The letter also noted "the City received correspondence from the Workers' Compensation Appeals Board that indicated you had a change of address," and asked her to let the City know if she had changed her address so that her address on file with the City could

[2] Although the record on appeal contains a work status form dated September 23, 2021, it does not reflect that Lopez e-mailed or otherwise sent that document to the City.

be updated.[3] The letter stated that, if she did not respond by October 21, 2021, the City would consider her failure to respond as an abandonment of her job and she would be separated from her position.

By November 2, 2021, the City had not received any response from Lopez to its communications since August 5, 2021. It therefore sent Lopez yet another letter—again, both by e-mail and mail—stating that, having received no response to its October 11, 2021 letter, the City was formally notifying her that her "extensive absence from duty without approved leave is deemed a resignation, and you are separated from your position as a Public Works Dispatcher with the City . . . effective October 22, 2021."

As discussed further below, Lopez now attempts to create a dispute about when she received the City's letters dated July 27, 2021, August 24, 2021, and October 11, 2021, because those letters were addressed to her prior Fullerton address but she had moved to Yucaipa in June 2021. Although Lopez concedes she received all three letters, she asserts it was not until "several months after they were mailed." Additionally, as discussed further below, Lopez attempts to create a dispute as to when certain of her work status forms were sent to the City.

In September 2022, Lopez filed her complaint against the City, asserting six causes of action for violations of FEHA: (1) disability discrimination (first cause of action); (2) failure to accommodate disability (second cause of action); (3) failure to engage in the interactive process (third

[3] The City's October 11, 2021 letter is addressed to a location in Fullerton. Omar Castro, a senior employee relations analyst for the City, declared the City also mailed a copy of that letter to Lopez's new Yucaipa address.

cause of action); (4) age discrimination (fourth cause of action); (5) failure to prevent discrimination (fifth cause of action); and (6) retaliation (sixth cause of action).

In February 2024, the City filed its motion for summary judgment addressed to Lopez's entire complaint, along with supporting materials, including a request for judicial notice, a separate statement, a declaration from counsel, a declaration from Castro, and exhibits. In May 2024, Lopez filed her opposition and supporting materials, including a declaration from counsel, exhibits, and her separate statement and opposition to the City's separate statement. The City filed its reply brief and reply separate statement in May 2024. The City also filed objections to some of Lopez's evidence.

The trial court granted the motion for summary judgment in July 2024. On the claims for disability discrimination, age discrimination, and retaliation, the court found the City had met its initial burden to show the adverse employment action of involuntary termination was based upon legitimate, nondiscriminatory factors because the City had presented sufficient evidence Lopez had abandoned her employment.[4] The court therefore found the burden shifted to Lopez to show a triable issue of material fact, but "the evidence proffered does not show that [her] termination was a result of age/disability discrimination and [she] failed to proffer sufficient evidence rebutting [the City's] showing that any adverse

[4] In its motion for summary judgment, the City argued Lopez could not prove she suffered an adverse employment action because, under the City's municipal code and Government Code section 19996.2, she resigned from her position. The trial court did not rule on this argument and instead assumed for purposes of its ruling that Lopez was involuntarily terminated.

employment action was supported by a legitimate, non-discriminatory purpose."

Regarding Lopez's claims for failure to reasonably accommodate and failure to engage in the interactive process, the court found the City had met its initial burden because evidence showed Lopez "was responsible for the breakdown in the interactive process" and Lopez failed to meet her burden of showing a triable issue of material fact as to these two claims. The court found Lopez's failure to prevent discrimination claim "necessarily fails given that the underlying discrimination claims fail." The court also sustained some of the City's evidentiary objections and granted some of the City's requests for judicial notice.

In August 2024, the trial court entered judgment in favor of the City. Lopez appeals.

DISCUSSION

I.

APPELLATE BRIEFING

As an initial matter, the City argues Lopez's appeal should be denied because her counsel breached their duty of candor and failed to provide a complete statement of facts. (See *Perry v. Kia Motors America, Inc.* (2023) 91 Cal.App.5th 1088, 1095–1096; Cal. Rules of Court, rule 8.204(a)(2)(C).) As discussed further below, we disagree with a number of Lopez's arguments regarding what the evidence supports, and we agree with the trial court's statement that Lopez's "proffered evidence often does not support the contention (or implication) being made." We decline, however, to

reject Lopez's appeal on the ground her counsel breached their duty of candor or failed to provide a complete statement of facts.

We also remind Lopez's counsel of the requirement that every brief must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears." (Cal. Rules of Court, rule 8.204(a)(1)(C).) ""Any statement in a brief concerning matters in the appellate record—whether factual or procedural and *no matter where in the brief the reference to the record occurs*—must be supported by a citation to the record."" (See *Wentworth v. Regents of University of California* (2024) 105 Cal.App.5th 580, 595.) Although Lopez generally included record citations in the statement of facts included in her opening brief on appeal, there are numerous instances in the argument section of her opening brief where she makes factual assertions without any record citation at all. (See *id.* at pp. 595–596 [concluding appellant's brief violated the California Rules of Court where, although appellant "provides record citations for the factual background section of his brief, seldom does he provide record citations in the argument sections of his briefs"].) Although Lopez's counsel did not comply with this rule, we decline to find that Lopez has therefore forfeited all the assertions in her opening brief's argument section that lack record citations;

instead, we "have attempted to determine and address, as best we can, the factual support for [Lopez's] positions." (*Id.* at p. 596.)[5]

II.

STANDARD OF REVIEW AND BURDEN-SHIFTING FRAMEWORK FOR DISCRIMINATION CAUSES OF ACTION

"'"On review of an order granting or denying summary judgment, we examine the facts presented to the trial court and determine their effect as a matter of law." [Citation.] We review the entire record, "considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained." [Citation.] Evidence presented in opposition to summary judgment is liberally construed, with any doubts about the evidence resolved in favor of the party opposing the motion. [Citation.] [¶] Summary judgment is appropriate only "where no triable issue

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[5] Lopez's statement of facts in her opening brief includes many instances where she included improper block citations to deposition transcripts instead of indicating the specific page or pages that support the statement. (See *Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205 ["It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing *exact page citations*" (italics added)]; Cal. Rules of Court, rule 8.204(a)(1)(C).) For example, in Lopez's opening brief, she asserts the City "was aware of . . . Lopez's move and was aware of a new Yucaipa address," and provides a citation of "PUMF No. 21 (2 CT 360, 396, 408–436, 440–496)." But pages 408 through 436 of the clerk's transcript comprise nearly the entirety of Lopez's deposition transcript and pages 440 through 496 comprise the entirety of Castro's deposition transcript and index (and, except for the index, there are four pages of deposition transcript on each page of the clerk's transcript). Although these block citations are improper, to the extent Lopez has referred more specifically to the underlying testimony she is relying on in another location in her appellate briefs or opposition papers in the trial court (e.g., in her separate statement), we have attempted to determine, as best we can, the specific testimony she contends supports the statements where she provides block citations.

of material fact exists and the moving party is entitled to judgment as a matter of law." [Citation.] A defendant seeking summary judgment must show that the plaintiff cannot establish at least one element of the cause of action.'" (*Wilkin v. Community Hospital of Monterey Peninsula* (2021) 71 Cal.App.5th 806, 820 (*Wilkin*).)

"'California uses the three-stage burden-shifting test established by the United States Supreme Court for trying claims of discrimination based on a theory of disparate treatment. (*Guz* [*v. Betchel National, Inc.* (2000)] 24 Cal.4th 317, 354 . . . ; see *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 . . . (*McDonnell Douglas*).) "This so-called *McDonnell Douglas* test reflects the principle that direct evidence of intentional discrimination is rare, and that such claims must usually be proved circumstantially. Thus, by successive steps of increasingly narrow focus, the test allows discrimination to be inferred from facts that create a reasonable likelihood of bias and are not satisfactorily explained."'" (*Wilkin, supra*, 71 Cal.App.5th at pp. 820–821; see also *Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 159 (*Wills*).)

"'Under the *McDonnell Douglas* test, the plaintiff has the initial burden of establishing a prima facie case of discrimination. [Citation.] To meet this burden, the plaintiff must, at a minimum, show the employer took actions from which, if unexplained, it can be inferred that it is more likely than not that such actions were based on a prohibited discriminatory criterion. [Citation.] A prima facie case generally means the plaintiff must provide evidence that (1) the plaintiff was a member of a protected class, (2) the plaintiff was qualified for the position he or she sought or was performing competently in the position held, (3) the plaintiff suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests a discriminatory

motive.'" (*Wilkin, supra*, 71 Cal.App.5th at p. 821.) "'If the plaintiff establishes a prima facie case, then a presumption of discrimination arises, and the burden shifts to the employer to rebut the presumption by producing admissible evidence sufficient to raise a genuine issue of material fact the employer took its actions for a legitimate, nondiscriminatory reason. [Citation.] If the employer meets that burden, the presumption of discrimination disappears, and the plaintiff must challenge the employer's proffered reasons as pretexts for discrimination or offer other evidence of a discriminatory motive.'" (*Ibid.*)

On a defendant's motion for summary judgment, we apply the following slightly modified framework: "'"If, as here, the motion for summary judgment relies in whole or in part on a showing of nondiscriminatory reasons for the discharge, the employer satisfies its burden as moving party if it presents evidence of such nondiscriminatory reasons that would permit a trier of fact to find, more likely than not, that they were the basis for the termination. [Citations.] To defeat the motion, the employee then must adduce or point to evidence raising a triable issue, that would permit a trier of fact to find by a preponderance that intentional discrimination occurred. [Citations.] In determining whether these burdens were met, we must view the evidence in the light most favorable to plaintiff, as the nonmoving party, liberally construing her evidence while strictly scrutinizing defendant's."'" (*Wilkin, supra*, 71 Cal.App.5th at p. 822.)

III.

FIRST AND FOURTH CAUSES OF ACTION (DISABILITY AND AGE DISCRIMINATION)

"FEHA protects employees from discrimination based on a wide variety of grounds." (*Wills, supra*, 195 Cal.App.4th at p. 159.) Among other things, FEHA provides it is an "unlawful employment practice" for an

employer to discharge a person from employment because of the person's disability or age. (§ 12940, subd. (a).)

A. The City Met Its Burden of Presenting Evidence That Lopez Was Terminated for Nondiscriminatory Reasons

Assuming Lopez suffered an adverse employment action because she was terminated,[6] we conclude the City met its initial burden on summary judgment by producing evidence Lopez was terminated because she abandoned her job. Notably, the City presented evidence it requested information and responses from Lopez multiple times over an extended period of time, but after providing some information in early August 2021, Lopez failed to respond to any of the City's subsequent communications. The City's evidence showed that, after receiving Lopez's work status forms on August 3, 2021, the City sent Lopez a supplemental medical questionnaire on August 5, 2021, and asked her to return the form with her doctor's response within 14 days, but received no response. The City's evidence also showed it sent additional communications to Lopez on August 24 and October 11, 2021, again asking Lopez to provide information, and again it received no response. It was at that point the City notified her she was separated from the City's employ.

Based on this evidence, we conclude the City "satisfied its burden of presenting sufficient evidence of nondiscriminatory reasons for [Lopez's] employment termination to enable a trier of fact to reasonably find, more likely than not, that they were the bases for the termination of her

[6] As noted above, the trial court assumed Lopez was involuntarily terminated. On appeal, the City argues Lopez did not suffer an adverse employment action because she voluntarily resigned. For this opinion, we assume without deciding that Lopez suffered an adverse employment action because she was terminated.

employment. The burden therefore shifted to [Lopez] to "'adduce or point to evidence raising a triable issue, that would permit a trier of fact to find by a preponderance that intentional discrimination occurred.'" (*Wilkin, supra*, 71 Cal.App.5th at p. 823.)

B. Lopez Did Not Meet Her Burden of Raising a Triable Issue That Intentional Discrimination Occurred

"'[T]o avoid summary judgment [once the employer makes the foregoing showing], an employee claiming discrimination must offer substantial evidence that the employer's stated nondiscriminatory reason for the adverse action was untrue or pretextual, or evidence the employer acted with a discriminatory animus, or a combination of the two, such that a reasonable trier of fact could conclude the employer engaged in intentional discrimination.'" (*Wills, supra*, 195 Cal.App.4th at p. 160; see also *Wilkin, supra*, 71 Cal.App.5th at p. 824.) "'As several federal courts have stated: "The [employee] cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent."'" (*Wills*, at p. 160.)

Lopez asserts there is "clear evidence of pretext" in her termination. We disagree and instead conclude Lopez failed to meet her burden of raising a triable issue that intentional discrimination occurred.

Lopez asserts the City "refused to consult" its risk management department regarding her medical records. Lopez appears to be arguing the City's risk management department actually received all of Lopez's work status forms as of the date shown on the forms—i.e., that the City already had the June 24, 2021 work status form and July 22, 2021 work status form before Lopez e-mailed them to the City on August 3, 2021, and it also had

Lopez's September 23, 2021 work status form as of that date. According to Lopez, the City's "[r]isk [m]anagement department was responsible for receiving medical reports and work status updates directly from" the doctors treating the employees, and when an employee has an attorney, the "[r]isk [m]anagement department communicates directly with the attorney to obtain work status updates." But she provides no *evidence* that was the case here. Even if the City's risk management department may receive medical reports or work status forms in some cases, that does not mean Lopez's doctor or workers' compensation attorney actually sent those documents to the risk management department when they were issued. Lopez does not, for example, cite testimony from her doctor or workers' compensation attorney that they sent her work status forms to the City, either through the risk management department or otherwise. Lopez appears to rely on testimony from Castro's deposition for this assertion, but that testimony does not show the City actually received these documents when they were issued by the doctor.

Lopez also asserts her "understanding was that all medical reports and status updates issued by her worker's compensation doctors were sent to her [w]orker's [c]ompensation attorney, Jamie Blunt, to be forwarded to" the City. The testimony from Lopez's deposition that she appears to rely on for this assertion shows, at most, that she sent documents to her attorney; it does not show what her attorney did—or did not—forward to the City.

In any event, even if the June 24, July 22, and September 23, 2021 work status forms had been received by a different department at the City at the time they were issued, that still would not demonstrate pretext here. After Lopez e-mailed the June 24 and July 22, 2021 work status forms on August 3, 2021, the City sent Lopez the questionnaire seeking additional

information on August 5, 2021. Lopez did not respond with a completed questionnaire, even after the City's subsequent communication on August 24, 2021. Moreover, even if a different department of the City had received the September 23 work status form on that date, that form was not responsive to the City's August 5 and August 24 communications seeking the completed questionnaire. Additionally, the City's subsequent October 11 letter still provided Lopez with an opportunity to respond, including "to challenge the accuracy of the facts stated in" the letter, which she did not do.[7]

Lopez faults the City for not contacting her workers' compensation attorney despite knowing the attorney's contact information. We are not persuaded that the City contacting Lopez directly to ask for information, instead of reaching out to her workers' compensation attorney, supports an inference of pretext under the circumstances here. (See Cal. Code Regs., tit. 2, § 11069, subd. (d)(4) ["Direct communications between the employer or other covered entity and the applicant or employee rather than through third parties are preferred, but are not required"].)

Lopez suggests it was the City's policy to copy Lopez's workers' compensation attorney on all communications, and points to one e-mail from June 1, 2021, which the City sent to both Lopez and her workers' compensation attorney. But the testimony from Castro's deposition that

[7] The record also contains a supplemental medical-legal evaluation dated October 11, 2021. Similar to the other forms, even if this document was received by a different department at the City at the time it was issued, that still would not demonstrate pretext here. Again, this evaluation was not responsive to the City's communications seeking the completed questionnaire.

Lopez relies on as evidence the City had such a policy does not support her contention.[8]

Lopez also argues the City created what she refers to as a "Termination Tracking Chart." Lopez argues this chart shows a "clear intent" by the City "to begin pushing . . . Lopez out of the Department of Public Works after her initial off-work authorization expired on June 1, 2021 while she was still disabled and receiving medical treatment." The chart shows no such thing. As the trial court noted, there is "no evidence proffered to show that anyone other than [Lopez] identified the document as a 'Termination Tracking Chart.'" Instead, this chart simply shows Castro's notes and "To Do Items."

Lopez asserts Saba "tried to erase from the record" that he had spoken twice with her in June 2021. Lopez's argument appears to be the City was attempting to cover up its purported discrimination, but the cited evidence does not support that inference. Lopez's argument is based on a July 12, 2021 entry in Castro's chart that says the following: "Spoke with [Saba]. He is okay moving forward. He did mention that he informally reached out to [Lopez] a couple of times, the last time was about a month ago, to see how she was doing, but it was not meant to be a formal 'on the record call' and he wishes to not count this conversation as an official City attempt to contact [Lopez]. The conversation centered aroud [*sic*] how [Lopez] was

[8] In response to a question posed in his deposition, Castro agreed the June 1, 2021 e-mail was sent in compliance with the City's policy. But read together with, and in the context of, the prior question, it is clear the policy Castro referenced relates to the e-mail's request for an updated doctor's note or for Lopez to return to work by a certain date, not a policy that required the City to copy an employee's workers' compensation attorney on all communications.

doing, she's continued to be sick; she may have mentioned that she hoped to return to work around June. I mentioned to [Saba] that it may be odd to send a letter on his behalf saying the last date we attemped [*sic*] to reach her was June 1st and it was after, but he said that was okay because his reaching out to her was informally. He is okay proceeding with the letter. Told him i [*sic*] would check in with legal and then get back with him." We are not persuaded Saba's suggestion that his informal calls should not be considered official outreaches by the City somehow demonstrates or supports an inference of pretext. However characterized, the last of Saba's calls was in June 2021, and Lopez was not terminated until months later, after she had initially communicated with the City in early August but thereafter failed to respond to multiple communications.

Lopez points to another entry (dated August 3, 2021) in the chart that noted the following: "Also, got e-mail from department. They said they can't accommodate and want to set expectations / discipline employee when ee [employee] returns to work (no absenteeism issues or time off for 6 months...). I told them to stand by. Need to confirm with Jason that ee [employee] should remain on unauthorized time off and we should provide her with a medical questionnaire for her doctor." According to Lopez, this shows the City "was unequivocally communicating its desire not to accommodate . . . Lopez and to discipline her as soon as she returned to work." We disagree this note is evidence of pretext for her termination. At most, it is an internal note describing an e-mail from someone about not making accommodations. The record, however, does not show the City had determined at that time to reject Lopez's accommodations and communicated that to Lopez. Indeed, in her opposition to the motion, Lopez did not dispute that, "[u]pon receipt of [Lopez's] work status forms on August 3, 2021, the

City determined that it needed additional information to clarify the work restrictions or functional limitations referenced in [Lopez's] work status forms, to determine whether it could accommodate [Lopez]." The City did not tell Lopez it would not accommodate her; instead, it sent her the questionnaire to give to her doctor to complete so the City could consider her accommodation request.

Lopez also argues that, even after the City was aware of her new Yucaipa address, it failed to send the August 24 or October 11, 2021 letters to that address. Lopez asserts she moved to Yucaipa in June 2021, and the City "was aware of . . . Lopez's move and was aware of a new Yucaipa address." Lopez asserts she did not receive the City's July 27, August 24, and October 11, 2021 letters until several months after they were mailed, and she appears to be suggesting the City deliberately mailed her letters to the incorrect address so she could not respond. To the extent Lopez is suggesting the City knew she had moved to Yucaipa when it sent the July 27 and August 24, 2011 letters, Lopez's evidence does not support that proposition. Lopez relies on testimony by Castro that at some point he became aware she might have a new address, but it was not clear that was the case because he had not received a change of address form from her. Castro clarified he did not become aware Lopez had a different address until "September 22, 2021 or thereabout." In any event, even if the City had mailed these letters to the incorrect address,[9] this argument does not support pretext because the City also sent the letters to Lopez by e-mail. Given that Lopez had been communicating with the City via e-mail in early August, the fact that the

[9] Castro declared the City mailed the October 11, 2021 letter to the address the City had on file for Lopez and also mailed a copy to her new Yucaipa address.

City continued to communicate with her at that same e-mail address does not support an inference of pretext.

Lopez also faults the City for not sending its pretermination letters with a return receipt requested in compliance with the City's municipal code.[10] It appears the City mailed the letters using tracking information from the postal service but did not request return receipts. We do not find the failure to send the letters with a return receipt requested supports pretext, particularly in light of the undisputed fact the City also sent each of its letters to Lopez via e-mail.[11]

Regarding her claim for age discrimination, Lopez refers to the same purported evidence of pretext she points to for her claim of disability discrimination. As discussed above, that evidence does not create a triable issue of fact. Additionally, in her opening brief on appeal, Lopez claims, "during a management meeting, it was discussed that the management team wanted . . . Lopez gone so that 'they could have new blood.'" Lopez also asserts, on several occasions, her supervisor called her a "'high paid receptionist' during the course of [the City's] management meetings." But Lopez's appellate opening brief fails to mention the trial court sustained the

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[10] Section 9-139 of the City's municipal code provides, in part, the following: "Prior to invoking this section for employees who have achieved regular status, the affected employee shall be provided written notice by United States Mail, return receipt requested, of the department head's intention to invoke this section and stating the facts supporting the intention."

[11] Lopez asserts she "specifically testifie[d]" she did not receive the August 24 and October 11, 2021 e-mails. But Lopez did not testify she no longer had access to her e-mail address or the City used an incorrect e-mail address. She only testified she did not recall receiving those e-mails.

City's objections to Lopez's deposition testimony regarding those purported comments. Indeed, the court explained in its summary judgment order that Lopez "appears to rely upon inadmissible hearsay statements." Lopez has not made a developed argument on appeal, supported by applicable case authority, challenging the court's determination that these statements are inadmissible hearsay. She therefore has waived her ability to rely on testimony to which the trial court sustained objections. (See *Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived"].)[12]

Lopez also says her coworkers made jokes and comments such as "'aren't you getting old' and 'aren't you going to retire.'" In her deposition, however, Lopez could not recall who made those comments. Lopez also asserts she received "'hate mail.'" But she testified the claimed hate mail was approximately 10 or 15 years ago, and when asked if the hate mail was motivated by her age, she said she would have to speculate, had no idea, and then suggested it was motivated by "jealousy." We conclude the purported comments from unspecified people and "'hate mail'" are not sufficient to raise an inference that her termination for abandoning her job was pretext or otherwise create a triable issue.

[12] Lopez's reply brief asserts the trial court's evidentiary ruling was wrong, but she does not explain why her testimony regarding the purported "'new blood'" and "'high paid receptionist'" statements were not based on hearsay.

IV.

SIXTH CAUSE OF ACTION (RETALIATION)

"To establish a prima facie case of retaliation under FEHA, a plaintiff must show '(1) he or she engaged in a "protected activity," (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action.'" (*Wilkin, supra*, 71 Cal.App.5th at p. 827.) "In summary judgment proceedings, a FEHA retaliation claim is treated the same as a FEHA discrimination claim: Where ""the employer presents admissible evidence either that one or more of [the employee's] prima facie elements is lacking, or that the adverse employment action was based on legitimate, nondiscriminatory [or nonretaliatory] factors, the employer will be entitled to summary judgment unless the [employee] produces admissible evidence which raises a triable issue of fact material to the [employer's] showing."'" (*Id.* at p. 828.)

Lopez's retaliation cause of action fails for the same reasons her discrimination causes of action fail. Lopez has not raised a triable issue of fact that her termination was not based on a legitimate, nonretaliatory factor (i.e., that she had abandoned her job).[13]

[13] To the extent Lopez is attempting to argue her retaliation claim is based on an action taken by the City other than her termination, she has failed to make a developed argument on appeal, supported by applicable case authority, that such an action constituted an adverse employment action. (See *Benach v. County of Los Angeles, supra*, 149 Cal.App.4th at p. 852.)

V.

SECOND AND THIRD CAUSES OF ACTION (FAILURE TO ACCOMMODATE DISABILITY AND ENGAGE IN THE INTERACTIVE PROCESS)

"FEHA imposes on the employer the obligation to make reasonable accommodations: 'It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California: [¶] . . . [¶] (m)(1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee.'" (*Wilkin, supra*, 71 Cal.App.5th at p. 828.) "FEHA also makes it unlawful for an employer 'to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.' (§ 12940, subd. (n).) Section 12940, subdivision (n) imposes separate duties on the employer to engage in the 'interactive process' and to make 'reasonable accommodations.'" (*Id.* at pp. 828–829.)

"Two principles underlie a cause of action for failure to provide a reasonable accommodation. First, the employee must request an accommodation. [Citation.] Second, the parties must engage in an interactive process regarding the requested accommodation and, if the process fails, responsibility for the failure rests with the party who failed to participate in good faith. [Citation.] While a claim of failure to accommodate is independent of a cause of action for failure to engage in an interactive dialogue, each necessarily implicates the other." (*Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 54.)

Here, these claims fail because the evidence shows Lopez was responsible for the breakdown in the interactive process. As discussed above, after receiving Lopez's June 24 and July 22, 2021 forms on August 3, 2021, the City promptly sent Lopez a questionnaire requesting additional information from her doctor. We agree with the trial court that "[t]he evidence proffered does not show for example that a triable issue of material fact exists as to whether [the City] failed to act in good faith when requesting further information." It shows Lopez failed to respond to the City's questionnaire and then failed to respond to the City's follow-up communications.[14]

VI.

FIFTH CAUSE OF ACTION (FAILURE TO PREVENT DISCRIMINATION)

"An employer cannot be liable for failure to prevent discrimination . . . if there is no actionable discrimination in the first place." (*Wilkin, supra*, 71 Cal.App.5th at p. 830.) We agree with the trial court that Lopez's claim for failure to prevent discrimination fails given that her underlying discrimination claims fail.

Lopez appears to argue the trial court erred in ruling against her claim for failure to prevent discrimination because it is not derivative of her underlying discrimination claims. Lopez asserts "the facts set forth in the above sections, as well as below, establish that [the City] failed to protect [Lopez] from [d]iscrimination and, as a proximate result, [she] was harmed."

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[14] As discussed above, Lopez's evidence does not show the City received the June 24 and July 22, 2021 forms prior to August 3, 2021. Additionally, Lopez argues the City failed to accommodate Lopez or engage in an interactive process because of her completed September 23, 2021 work status form. Again, however, Lopez's evidence does not show the City had received that form at the time it determined she had abandoned her job.

We conclude this undeveloped argument is waived. (See *Benach v. County of Los Angeles, supra*, 149 Cal.App.4th at p. 852.)[15]

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

GOODING, J.

WE CONCUR:

DELANEY, ACTING P. J.

BANCROFT, J.*

*Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

[15] In its respondent's brief, the City asks that we sanction Lopez and/or her counsel by awarding the City its attorney fees on appeal, on the ground that the appeal was frivolous. The City's sanctions request is denied. (See *Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 919 ["Sanctions cannot be sought in the respondent's brief"].)