

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1076**

Peg Dahl,
Appellant,

vs.

Regents of the University of Minnesota, et al.,
Respondents.

**Filed March 25, 2013
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CV-11-18834

Richard A. Williams, Jr., R.A. Williams Law Firm, P.A., St. Paul, Minnesota (for
appellant)

Mark B. Rotenberg, Brian J. Slovut, University of Minnesota, Minneapolis, Minnesota
(for respondents)

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the summary-judgment dismissal of her state and federal
pregnancy-discrimination claims, arguing that the district court erred by (1) applying the
wrong legal standard, (2) determining that appellant presented no direct evidence of

discrimination, and (3) determining that appellant failed to establish a prima facie case of discrimination and pretext under the *McDonnell Douglas* test. Because appellant has not presented direct evidence of discrimination and the circumstances surrounding her employment termination fail to give rise to an inference of discrimination, we affirm.

FACTS

On February 11, 2008, appellant Peg Dahl began working as the chief financial officer (CFO) of the University of Minnesota Press (U Press). Dahl's position was full-time and based on an annually renewable contract. In mid-March 2008, Dahl notified U Press that she was pregnant and planned to take six weeks of maternity leave. In June 2008, Doug Armato, Dahl's supervisor, formally reviewed Dahl's performance as CFO. He concluded that Dahl had done "exceedingly well" in her initial four months, but also noted several goals for the CFO position.

On August 8, 2008, approximately one week before going on leave, Dahl requested that she be allowed to reduce her schedule to 50% and to bring her baby to work for a six-week period following her maternity leave. Dahl admits that under her contract, she was not entitled to work a 50% schedule or to bring her child to work. Dahl's predecessor as CFO (a position previously titled Fiscal Manager; hereinafter CFO), Michelle Prytz, had a child and took maternity leave in 2000. From January 2004 through May 2005, Prytz was permitted to work an 80% schedule at U Press. At the time that Prytz's schedule was reduced, she had been working at U Press for 13 years and had served as CFO for more than five years.

Dahl went on maternity leave on August 14, 2008. She was expected to return to work on September 25. On September 12, Armato denied Dahl's request to return to work on a 50% schedule, explaining that a number of issues requiring Dahl's attention precluded a reduced schedule:

Given how much there is to do in the Business Office and the many issues requiring resolution and/or streamlining related to EFS—as well as your need to get up to speed on other matters that are part of the CFO position, including liaison with CDC—we can't accommodate your request to work a half-time schedule from your return date through Thanksgiving. That is: we need you to return to a full 40 hour work schedule.

Dahl took an additional six-week leave, returning to U Press on November 10—more than 12 weeks after commencing her maternity leave.

On November 21, Dahl contacted Disability Services at the University of Minnesota, the office that “coordinat[es] the details of an employee's successful return to work from short-term or long-term disability leaves or medical leave.” She informed that office that she might have post-partum depression and that her doctor recommended a reduced work schedule. Dahl maintained contact with Disability Services over the next few weeks, further reporting that her work environment was “strained,” she did not feel supported by her supervisor, and that she had taken the job as CFO expecting “flexibility.”

On December 5, Dahl informed Disability Services that her doctor recommended a three-month medical leave of absence due to her depression and stated that she did not want to return to her job as CFO of U Press. On December 9, Dahl took medical leave

under the University's policy and never returned to work. Disability Services began assisting Dahl in finding other employment, both inside and outside the University, and in obtaining disability-insurance benefits. While on medical leave, Dahl maintained contact with Disability Services regarding her job-search efforts, medical condition, and medical treatment. During this time, Dahl reiterated that her goal was to not return to her position at U Press. Over the next several months, Disability Services searched for job openings, arranged job interviews for Dahl, and helped Dahl prepare for interviews.

In February 2009, U Press management discussed the organization's budget for the fiscal year. Due to concerns about the national recession and declining book sales, and fearing across-the-board budget cuts from the University, U Press decided to eliminate the position of CFO and redistribute the CFO's duties across existing positions. The management structure of U Press has not changed since the restructuring. On March 31, 2009, U Press informed Dahl that her contract would not be renewed and that her employment would end on June 7, 2009.

In September 2011, Dahl sued U Press, the Regents of the University of Minnesota, and the University of Minnesota, asserting, among other claims, pregnancy discrimination in violation of the federal Pregnancy Discrimination Act (the PDA), 42 U.S.C. §§ 2000e(k), 2000e-2(a)(1) (2006), and the Minnesota Human Rights Act (the MHRA), Minn. Stat. §§ 363A.03, subd. 42, .08, subd. 2 (2012).

U Press moved for summary judgment. With respect to the federal and state pregnancy-discrimination and retaliation claims, U Press argued that Dahl failed to meet her burden under the *McDonnell Douglas* framework because she presented no evidence

linking her termination with her pregnancy or maternity leave and that the temporal gap between those events was too great.

In opposition to U Press's motion, Dahl asserted that she had produced "direct evidence" of discrimination by showing that Dahl's predecessor, Prytz, was allowed to work an 80% schedule for a period of time. In so arguing, Dahl relied on *Deneen v. Nw. Airlines, Inc.*, 132 F.3d 431 (8th Cir. 1998), for the proposition that evidence of differential treatment between pregnant employees is "direct evidence" of discrimination.

The district court rejected Dahl's characterization of *Deneen*, concluded that she had not presented direct evidence of discrimination, and applied the *McDonnell Douglas* burden-shifting framework to her discrimination and retaliation claims. While recognizing that circumstantial evidence of differential treatment between employees might give rise to an inference of discrimination, the district court determined that no such inference was created here because Dahl compared herself to another recently pregnant employee rather than an employee who had not become pregnant and was allegedly treated more favorably. Further noting the "significant time lapse" between Dahl's pregnancy and her termination, the district court concluded that Dahl failed to establish a prima facie case of pregnancy discrimination or retaliation. The district court also rejected Dahl's interference claim because Dahl was never denied any FMLA rights—she took 12 weeks of FMLA leave, all that she was entitled. The district court granted summary judgment for U Press and dismissed Dahl's complaint in its entirety. This appeal follows.

DECISION

The issue before us is whether the district court erred by dismissing Dahl’s claims of pregnancy discrimination in violation of the PDA and the MHRA.¹ We review a district court’s decision on summary judgment de novo. *Riverview Muir Doran, LLC v. JADT Dev. Group, LLC*, 790 N.W.2d 167, 170 (Minn. 2010). “In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Id.*

Title VII makes it unlawful for an employer to discharge an individual on the basis of his or her sex. 42 U.S.C. § 2000e-2(a)(1) (2006). As amended by the PDA, the sex discrimination proscribed by Title VII includes discrimination on the basis of “pregnancy, childbirth, or related medical conditions.” 42 U.S.C. § 2000e(k). Similarly, under the MHRA, an employer may not terminate an employee based upon that individual’s sex. Minn. Stat. § 363A.08, subd. 2 (2012). The term “sex” is statutorily defined to include pregnancy. Minn. Stat. § 363A.03, subd. 42 (2012).

A claim of pregnancy discrimination will survive summary judgment if supported by either (1) direct evidence of discrimination or (2) sufficient circumstantial evidence of unlawful discrimination under the framework outlined in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). *Elam v. Regions Fin. Corp.*, 601 F.3d 873, 878 (8th Cir. 2010) (analyzing a claim under the PDA); *Fjelsta v. Zogg Dermatology, PLC*, 488 F.3d 804, 809, 810 (8th Cir. 2007) (analyzing claims under the PDA and

¹ The only challenge before us concerns Dahl’s claims of pregnancy discrimination. We limit our review of the district court’s decision accordingly.

MHRA); *see also Hanenburg v. Principal Mut. Life Ins. Co.*, 118 F.3d 570, 574 (8th Cir. 1997) (“In analyzing cases under the MHRA, the state courts apply the principles developed in the adjudication of claims under Title VII because of the substantial similarities between the two statutes.”).

On appeal, Dahl objects to the standard that the district court applied in adjudicating U Press’s motion—the *McDonnell Douglas* framework. Because that standard is appropriate in the absence of direct evidence of discrimination, Dahl’s argument that the district court applied the wrong summary-judgment standard is duplicative of her argument that she presented direct evidence of discrimination. “Direct evidence is evidence showing a *specific link* between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the adverse employment action.” *Ramlet v. E.F. Johnson Co.*, 507 F.3d 1149, 1152 (8th Cir. 2007) (quotation omitted) (emphasis added).

Dahl contends that she presented direct evidence of discrimination by showing that her predecessor was permitted to work an 80% schedule for a period of time after having a child, while her request to work a 50% schedule after maternity leave was denied. To support her theory—that evidence of Prytz’s reduced appointment is direct evidence of discrimination—Dahl relies on *Deneen* for the proposition that “such differential treatment among employees with respect to pregnancy leave is direct evidence of a violation of the [PDA].” But Dahl’s reading of *Deneen* is incorrect, because the Eighth Circuit in that case treated the evidence of differential employee

treatment as circumstantial evidence subject to the *McDonnell Douglas* framework. 132 F.3d at 437, 438.

Here, the evidence of differential treatment between Prytz and Dahl is insufficiently probative to support a claim under the direct-evidence standard because the fact that Prytz was allowed to work a reduced appointment after her pregnancy but Dahl was not, fails to show a specific link between U Press's alleged discriminatory intent and the elimination of the CFO position. Therefore, the issue becomes whether Dahl's claim satisfies the burden-shifting framework in *McDonnell Douglas*, 411 U.S. 792, 93 S. Ct. 1817. Under *McDonnell Douglas*, an employee first must establish a prima facie case of discrimination. *Cronquist v. City of Minneapolis*, 237 F.3d 920, 924 (8th Cir. 2001). Once the employee makes out a prima facie case, the employer must proffer a legitimate, nondiscriminatory reason for the adverse employment action. *Id.* If the employer puts forth such a reason, the employee then has the burden of demonstrating that the proffered reason is merely a pretext for illegal discrimination. *Id.*

To establish a prima facie case of pregnancy discrimination, Dahl must demonstrate: "(1) she was a member of a protected group; (2) she was qualified for her position; and (3) she was discharged under circumstances giving rise to an inference of discrimination." *Hanenburg*, 118 F.3d at 574.

Only the third element of a prima facie showing is in dispute. To support her theory that she was discharged under circumstances giving rise to an inference of discrimination, Dahl revives her argument that, under the facts and holding of *Deneen*, the differential treatment between Dahl and Prytz is dispositive. Dahl also asserts that the

temporal proximity between her pregnancy and the elimination of the CFO position creates an inference of discrimination. Both arguments are defeated by the governing law.

Differential Treatment

Dahl argues that because Prytz was allowed to work part-time while on maternity leave and 80% after her leave and Dahl was prohibited from working a same or similar schedule, she has established a prima facie case of discrimination. But the fact that Prytz was allowed to work a different schedule than Dahl does not imply discriminatory animus. And Dahl's comparison between herself and Prytz, as a way to meet her burden, is misguided, because

the relevant question in a pregnancy discrimination case is whether the employer treated the pregnant plaintiff differently than *nonpregnant* employees[,] not whether the employer could have made more concessions for the plaintiff. . . . [T]he state of being pregnant is not itself a reason for distinguishing between employees. . . . A comparison with other pregnant employees in most instances will not give rise to an inference of discrimination on the basis of pregnancy.

Deneen, 132 F.3d at 437-38 (emphasis added) (quotation and citation omitted). As indicated in the holding of *Deneen*, Dahl's comparison with Prytz based solely on the shared characteristic of pregnancy is irrelevant to our analysis of whether U Press discriminated against Dahl because of her pregnancy. What may have been relevant is a showing that Dahl was treated less favorably than a nonpregnant employee. But Dahl has not presented any such evidence.

But Dahl argues that the facts of her case are similar to that of *Deneen*, making her case one of the few where a comparison among pregnant employees is relevant. This argument too relies on an imprecise understanding of *Deneen*. The comparison at the center of that case was not just between pregnant employees, but between pregnant employees with pregnancy-related complications. *Id.* at 438. The Eighth Circuit was careful to highlight this distinction and its importance in its inquiry. The Eighth Circuit explained: “While the comparison group was similarly pregnant . . . the distinguishing feature is not the pregnancy alone but [the employee’s] pregnancy-related complication which [the employer] assumed existed.” *Id.* Not only is *Deneen* distinguishable from this case, it lends no support to Dahl’s claim. As such, we conclude that the comparative evidence that Dahl has presented is wholly insufficient to give rise to an inference of illegal discrimination.

Temporal gap

Dahl states that “the temporal relationship” between her pregnancy and termination “raise[s] a clear inference of unlawful conduct.” We disagree. While not dispositive, an extended period of time between protected activity and an adverse employment action can defeat an inference of discrimination. *See Kipp v. Mo. Highway & Transp. Comm’n*, 280 F.3d 893, 897 (8th Cir. 2002) (holding that no inference of discrimination existed when two months had passed). “[O]nly in cases where the tempora[l] proximity is very close can the plaintiff rest on it exclusively.” *Tyler v. Univ. of Ark. Bd. of Trs.*, 628 F.3d 980, 986 (8th Cir. 2011) (analyzing a Title VII retaliation

claim). “The inference vanishes altogether when the time gap between the protected activity and the adverse employment action is measured in months.” *Id.*

The federal district court has held that a termination that occurred less than one month after the birth of a child and another termination before the birth of a child, combined with additional evidence of animosity associated with those employees’ pregnancies, established a prima facie case of discrimination. *Scheidecker v. Arvig Enters., Inc.*, 122 F. Supp. 2d 1031, 1036, 1041-42 (D. Minn. 2000). But a period of two weeks between an employee’s FMLA leave and adverse-employment action was deemed “barely” sufficient to prove causation on a retaliation claim. *Smith v. Allen Health Sys., Inc.*, 302 F.3d 827, 833 (8th Cir. 2002). In contrast, a six-month gap between protected activity and an adverse-employment action was too long to establish a prima facie Title VII case. *Recio v. Creighton Univ.*, 521 F.3d 934, 941 (8th Cir. 2008).

A year passed from the time that U Press was aware of Dahl’s pregnancy (March 2008) to its notification of non-renewal of her position (March 2009). At least five and one-half months passed from the end of Dahl’s pregnancy (mid-August 2008) to the time that U Press decided to eliminate her position (February 2009); more than seven months passed from the end of her pregnancy to her notification of non-renewal (March 31, 2009). The significant time that passed between Dahl’s pregnancy and the termination of her employment belies her assertion of any causal connection between the two events. Without any additional evidence of discriminatory animus, U Press’s decision in February is too remote in time from Dahl’s pregnancy to give rise to any inference of discrimination.

On this record, Dahl has not satisfied her burden under either the direct method or the *McDonnell Douglas* framework to establish a prima facie case of pregnancy discrimination. Consequently, the district court properly granted summary judgment.

Affirmed.