IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

VANDANA C. REDDY, Plaintiff, v. MILAN EYE LLC d/b/a MILAN EYE CENTER, Defendants.	:	CIVIL ACTION NO: 1:19-cv-4374-AT

ORDER

Plaintiff Vandana Reddy is an ophthalmologist, who identifies as a South Indian woman. In this action, she brings claims against her former employer Milan Eye LLC ("Milan Eye") for gender discrimination, race/national origin discrimination, and retaliation under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq*., and 42 U.S.C. § 1981. Milan Eye seeks summary judgment on all claims [Doc. 86]. The Magistrate Judge recommends that Milan Eye's Motion be denied in full [Report and Recommendation ("R&R"), Doc. 109]. Both sides have filed objections to certain findings in the R&R. (Docs. 111, 112.) The Court addresses the objections and underlying claims below.

I. Standard of Review

After conducting a careful and complete review of a magistrate judge's findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1)(C);

Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982). Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the R&R that is the subject of a proper objection on a *de novo* basis and any non-objected portion for plain error. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 154 (1985); *Furcon v. Mail Centers Plus, LLC*, 843 F.3d 1295, 1308 (11th Cir. 2016). The district judge must "give fresh consideration to those issues to which specific objection has been made by a party." *Jeffrey S. v. State Bd. Of Educ. Of Ga.*, 896 F.2d 507, 512 (11th Cir. 1990).

In review, the Court applies the standards for grant of summary judgment under Rule 56 of the Federal Rules of Civil Procedure set forth in *Anderson v. Liberty Lobby Inc.,* 477 U.S. 242, 248 (1986) and its progeny. The district court should resolve all reasonable doubts about the facts in favor of the non-movant and draw all justifiable inferences in [her] favor." *United States v. Four Parcels of Real Prop. in Greene & Tuscaloosa Cntys. in State of Ala.*, 941 F.2d 1428, 1437 (11th Cir. 1991) (*en banc*) (citations and punctuation omitted). The Court may not weigh conflicting evidence or make credibility determinations. *Hairston v. Gainesville Sun Publ'g Co.*, 9 F.3d 913, 919 (11th Cir. 1993), *reh'g denied*, 16 F.3d 1233 (11th Cir. 1994) (*en banc*).

II. Report and Recommendation of the Magistrate Judge

As noted above, Plaintiff is an ophthalmologist who worked for Milan Eye from September 2016 until she was fired in February 2019 for her alleged "negative and demeaning" attitude towards staff and an allegation that she discussed patient

information publicly. Plaintiff brings gender and race/national origin discrimination claims under Title VII and Section 1981, as well as retaliation claims based on protected activity under the same statutes.

The R&R first recommends denial of Defendant's Motion for Summary Judgement as to Plaintiff's gender and race/national origin discrimination claims under Title VII and § 1981. (R&R at 38.) The Magistrate Judge found that Plaintiff put forth evidence to support her claims under the *McDonnell-Douglas* burden-shifting framework. In particular, the Magistrate Judge found that Plaintiff offered at least one valid comparator (Dr. Desai) and also put forth evidence of pretext based on certain discriminatory comments by the decisionmaker (the CEO, Dr. Patel) coupled with a suspect time sequence of events. In response to Defendant's summary judgment motion, Plaintiff also offered certain statements made by Dr. Patel as direct evidence of discrimination. However, the Magistrate Judge determined that these statements, discussed below, did not constitute direct evidence.

On the retaliation claims, the R&R concludes that Plaintiff engaged in protected activity on two occasions—one in verbal expression and the other by written communication. The first instance of protected activity occurred in March 2018 and involved Plaintiff telling Dr. Patel that she felt she was subjected to a double standard because she is a woman. The second finding of protected activity is based on a letter sent to Dr. Patel by Plaintiff's counsel that outlines the ways in which she was subjected to gender discrimination. This letter was sent on

November 26, 2018 and Plaintiff was fired less than three months later. Defendant's stated reasons for termination were that: staff perceived Plaintiff's behavior as negative/demeaning; Milan Eye received numerous complaints about her behavior from staff and referring doctors; and Plaintiff discussed patient information in front of other individuals. However, based on the short lapse of time between Plaintiff's protected activity and termination, in combination with certain comments and actions of Dr. Patel, the R&R found that Plaintiff had established persuasive evidence that Defendant's reasons for terminating Plaintiff were pretextual.

Plaintiff objects solely to the finding that one particular comment made by Dr. Patel does not constitute direct evidence of discrimination. (Pl. Obj., Doc. 111.) Defendant filed objections to many of the Magistrate Judge's factual interpretations; the finding that Dr. Desai was a valid comparator; the finding that Plaintiff established pretext; and to the retaliation analysis generally. (Def. Obj., Doc. 112.)

III. Discussion of Objections to the R&R

A. Plaintiff's Objection (Doc. 111)

Kysha Knox-Scott, the former Office Manager at Milan Eye, recounted the events of a meeting she attended with Plaintiff and the partnership group of Milan Eye in March 2018. (Declaration of Kysha Knox-Scott, Doc. 89-28 at 23 ¶¶ 4-5, 46.) The purpose of the meeting was for Dr. Patel — the CEO and head doctor of Milan Eye — to address complaints about Plaintiff. (*Id.* ¶ 47.) At the meeting,

Plaintiff was "admonished and chided" for "vague things" like her tone by Dr. Patel and another doctor. (*Id.* ¶ 49.) No substantive detail about the complaints was provided. (*Id.* ¶ 51.) Knox-Scott believed the behavior in the meeting was intended to prompt Plaintiff to resign. (*Id.* ¶ 53.) At the end of the meeting, Plaintiff stated that she felt mistreated because she was the only female surgeon and felt there were double standards for her as a woman. (*Id.* ¶ 55.)

After this meeting, Knox-Scott was a party to other conversations regarding how to get rid of Plaintiff. (*Id.* ¶ 57.) On one occasion, Dr. Patel, the decisionmaker, discussing Plaintiff, stated: **"*once we get rid of Dr. Reddy*, we will never hire another female surgeon. They're too much trouble."** (*Id.* ¶ 58) (emphasis added.) The Magistrate Judge found that, although the statement was reprehensible, it did not constitute direct evidence of discrimination because it reflected animus towards hiring females in the future rather than proving the reason for Milan Eye's decision to terminate Plaintiff. (R&R at 24.) Plaintiff objects.

It is true that "only the most blatant remarks, whose intent could mean nothing other than to discriminate on the basis" of an impermissible factor are sufficient to constitute direct evidence. *Rojas v. Florida*, 285 F.3d 1339, 1342 n.2 (11th Cir. 2002) (quoting *Schoenfeld v. Babbitt*, 168 F.3d 1257, 1266 (11th Cir. 1997)). Upon review, however, the Court finds that the statement in question fits the mold. The first clause of the statement, "once we get rid of Dr. Reddy," cannot

be divorced from the remainder of the statement that "we will never hire another female surgeon."

Courts in the Eleventh Circuit have on numerous occasions held that blatant statements that evidence animus towards a protected class of individuals may constitute direct evidence. *See e.g.*, *Sennello v. Reserve Life Ins. Co.*, 872 F.2d 393, 394, 395 (11th Cir. 1989) (holding that statement that "we can't have women in management" constitutes direct evidence); *Burns v. Gadsden State Community College*, 908 F.2d 1512, 1518 (11th Cir. 1990) (holding that statement that "no woman would be named to a B scheduled job" constitutes direct evidence); *Bell v. Birmingham Linen Serv.*, 715 F.2d 1552, 1553, 1557 (11th Cir. 1983) (holding that supervisor's statement that he would not put woman in washerman position because "every woman in the plant would want to go into the washroom" constitutes direct evidence), *abrogated on other grounds by Price Waterhouse v. Hopkins*, 490 U.S. 228, 238 n.2 (1989); *Haynes v. W.C. Caye & Co., Inc.*, 52 F.3d 928 (11th Cir. 1995) (finding that statement that women were simply not tough enough to do the job was direct evidence of discrimination); *Horne v. Turner Constr. Co.*, 136 F. App'x 289, 292 (11th Cir. June 21, 2005) (holding statement by defendant's employee that supervisor had said he disliked women on the job site and that he would fire plaintiff because she is a woman is sufficient to establish direct evidence of discrimination and therefore to withstand summary judgment); *E.E.O.C. v. Beverage Canners, Inc.*, 897 F.2d 1067, 1068 n.3, 1072 (11th Cir. 1990) (holding that plant manager's statements such as "[t]hose n*****s out there will

not get anywhere in this company" constitute direct evidence); *E.E.O.C. v. Alton Packaging Corp.*, 901 F.2d 920, 923 (11th Cir. 1990) (holding that general manager's statement that "if it was his company, he wouldn't hire any Black people" and production manager's statement that "you people can't do a ––––– thing right" constituted direct evidence).

Unlike in *Fernandez* and *Burrell*, cases cited in the R&R, Dr. Milan's statement here explicitly indicates that he intends to "get rid of" Plaintiff in tandem with and in the context of, his broad-based discriminatory remark. *Fernandez v. Trees, Inc.*, 961 F.3d 1148, 1156 (11th Cir. 2020); *Burrell v. Bd of Trs. of Ga. Military Coll.*, 125 F.3d 1390, 1393 n. 7 (11th Cir. 1997) (explaining that statement in that case was not made in the context of decision to fire plaintiff).

For these reasons, the Court departs from the R&R's finding and instead concludes that the statement at issue constitutes direct evidence of sex discrimination. However, as discussed below, the Court finds that the Magistrate Judge correctly analyzed Plaintiff's claims under the *McDonnell-Douglas* framework, and can therefore prove her case under that alternate method as well, for the reasons discussed at length in the R&R.[1] Accordingly, the Court declines to adopt the portion of the R&R finding that this statement does not constitute direct evidence and **SUSTAINS** Plaintiff's Objection. (Doc. 111.)

[1] Because she found that Plaintiff established her case through the *McDonnell-Douglas* framework, the Magistrate Judge determined that she did not need to assess Plaintiff's claims though the lens of the convincing mosaic analysis. (R&R at n. 17.) The Court notes that Plaintiff's proffered evidence is likely sufficient to support her claims via the convincing mosaic analysis as well.

B. Defendant's Objections (Doc. 112)

Milan Eye devotes pages of its objections to quibbling with the R&R's interpretations of the evidence and findings of fact. In pointing out the R&R's alleged errors in factual interpretation, Defendant ignores the requisite standard of review on summary judgment, which demands that the Court draw all inferences in Plaintiff's favor, *Four Parcels*, 941 F.2d at 1437, and precludes the Court from making credibility determinations. *Hairston*, 9 F.3d at 919. Upon review the Court finds that the Magistrate Judge correctly assessed the facts in light of the relevant law and applicable standard.

Besides disputing general factual findings, Milan Eye specifically objects to the R&R's findings that (1) Plaintiff presented an adequate comparator in Dr. Desai; (2) Plaintiff proffered evidence of pretext; and (3) Plaintiff established retaliation claims. After conducting its *de novo* review on these issues, the Court finds no error.

First, the Magistrate Judge correctly assessed Plaintiff's comparator evidence under the governing standard set out in *Lewis v. City of Union City, Ga.*, 918 F.3d 1213, 1226 (11th Cir. 2019) (en banc). The *Lewis* Court abrogated the "nearly identical" standard that past Eleventh Circuit cases had "discordantly suggested," *id.* at 1218, and instead instructed that a proper comparator must be "similarly situated in all material respects." *Id.* Here, the Magistrate Judge correctly determined that Dr. Desai was similarly situated in all material respects. The Court reiterates the R&R's finding that Plaintiff and Dr. Desai are alleged to

have "engaged in the same basic conduct (or misconduct)" related to alleged disruptive behavior towards staff, sufficiently supporting that he is a proper comparator.[2] As the Court adopts the R&R's finding on this issue, it need not address Plaintiff's other proffered comparator, Mr. Pandya. The Court **OVERRULES** Defendant's objection as to the R&R's comparator finding.

Milan Eye also objects to the R&R's finding of pretext based on a number of discriminatory statements made by Dr. Patel, as well as suspect timing related to Dr. Patel's pausing his plans to fire Plaintiff until he could amass additional complaints against her. (R&R at 35-37.) Again, the Magistrate Judge properly assessed the evidence that clearly creates a jury question as to whether Defendant's legitimate nondiscriminatory reasons were pretextual. In its objections, Defendant merely highlights facts favorable to it (specifically complaints about Plaintiff) and ignores evidence of pretext. This evidence of pretext includes the statement, cited *supra* at 5, that the Court found constitutes direct evidence. Plaintiff also cites *another* statement by Dr. Patel that a dispute between Plaintiff and another female doctor had "gotten him to a point where he doesn't want to hire female Indian physicians because of everything he has to go through dealing with that conflict." (R&R at 7.) Additionally, the R&R recounted evidence that Dr. Patel created a

[2] Defendant argues that only other staff complained about Dr. Desai's behavior whereas staff *and* referring physicians complained about Plaintiff's behavior. (Def. Obj. at 15-18.) This level of exactitude might have been required under the "nearly identical" standard but is not under the current governing standard set out in *Lewis*. Moreover, the evidence Defendant relies on to support its contention that referring physicians complained about Plaintiff is disputed. (See Pl. Resp. to Def. Obj., Doc. 116 at n.12) (explaining that the two referring physicians in question never stopped referring patients to Plaintiff). At this juncture, the Court views the evidence in the light most favorable to Plaintiff.

shared folder on Google Drive to specifically gather complaints against Plaintiff—where there was little record evidence he did so with any other employee. (R&R at 36.) The R&R's finding of pretext was sound. The Court **OVERRULES** Defendant's objection on this front.

Finally, Defendant argues that the Magistrate Judge's finding that Plaintiff provided sufficient evidence to support her retaliation claims was erroneous because it fails to apply the but-for causation standard. (Def. Obj. at 28.) The Court disagrees. The R&R applies the correct but-for causation standard and appropriately finds that Plaintiff has provided sufficient evidence to support causation on her retaliation claims. Specifically, after Plaintiff engaged in protected activity in early 2018 by complaining that she was subjected to double standards as a woman, Dr. Patel expressed his desire to terminate her, for example asking "what do we have on her?" (Knox-Scott Decl. ¶ 60), persuading other employees to complain about Plaintiff to build a record against her (see *id.* ¶¶ 61, 66) and consistently commenting that she was difficult or too much trouble (*id.* ¶ 58). Additionally, Plaintiff was fired less than three months after her attorney sent Defendant a letter complaining that she was being subjected to unlawful sex discrimination. This timing, taken together with the evidence of Dr. Patel's comments and conduct, is sufficient to support causation. *See Sharpe v. Global Sec. Intern.*, 766 F. Supp. 2d 1272, 1301 (N.D. Ala. 2011) (holding time period of three months between protected activity and termination, in combination with evidence that decisionmaker viewed plaintiff as difficult and a complainer was

sufficient to establish causation) (citing *Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1278 (11th Cir. 2008) ("We construe the causal link element broadly so that 'a plaintiff merely has to prove that the protected activity and the negative employment action are not completely unrelated.'"); *see also, Boandl v. Geithner*, 752 F. Supp. 2d 540, 562 (E.D. Pa. 2010) (finding that plaintiff can show causal connection through "timing plus other evidence, such as evidence that the employer engaged in a pattern of antagonism with the plaintiff."); *Hamer v. City of Atlanta, Georgia*, 2016 WL 10591434, at *12 (N.D. Ga. Dec. 27, 2016), *report and recommendation adopted,* 2017 WL 5639953 (N.D. Ga. Jan. 18, 2017) (finding that plaintiff established causation through temporal proximity of just under three months plus comments that were circumstantial evidence of retaliation).

Accordingly, the Court **OVERRULES** Defendant's objection as to the R&R's findings on the retaliation claims.[3]

IV. Conclusion

To sum up, the Court **ADOPTS AS AMENDED** the Magistrate Judge's R&R [Doc. 109] and **DENIES IN FULL** Defendant's Motion for Summary Judgment [Doc. 86]. The Court **ORDERS** the Parties to engage in mediation to be conducted by a magistrate judge of this Court.

[3] Defendant did not specifically object that Plaintiff's proffered evidence of a comparator or protected activity were insufficient specifically as to the race/national origin discrimination claims under Title VII and Section 1981. These issues may require additional scrutiny if this case proceeds to trial.

The Clerk is **DIRECTED** to refer this action to the next available magistrate judge (other than Judge Cannon) for the purpose of conducting the mediation. The mediation shall be concluded within 45 days of the date of this order unless otherwise extended by the magistrate judge. If the case is not settled at the mediation, the parties are **DIRECTED** to file a status report with the Court within 10 days of the conclusion of the mediation and file a proposed consolidated pretrial order within 20 days of the conclusion of the mediation.

IT IS SO ORDERED this 29th day of September 2021.

Honorable Amy Totenberg
United States District Judge