STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1647

Samantha Wakasugi, Appellant,

vs.

3M Company,
Respondent.

Filed June 2, 2025
Reversed and remanded
Chutich, Judge[*]

Ramsey County District Court
File No. 62-CV-23-4381

Paul C. Dworak, Naomi E.H. Martin, Storms Dworak LLC, Minneapolis, Minnesota (for appellant)

Courtney M. Blanchard, Joseph G. Schmitt, Austin J. Spillane, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Frisch, Chief Judge; and Chutich, Judge.

[*] Retired justice of the Minnesota Supreme Court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10, and Minn. Stat. § 2.724, subd. 3 (2024).

NONPRECEDENTIAL OPINION

CHUTICH, Judge

Appellant Samantha Wakasugi challenges the summary-judgment dismissal of the pregnancy-discrimination claims she brought under the Minnesota Human Rights Act and the Minnesota Parental Leave Act against respondent 3M Company after her position was eliminated during a reduction in force. Wakasugi contends that reversal is required because she produced sufficient evidence to prove a prima facie case of discrimination and that 3M's explanation for her discharge was pretextual. Because genuine issues of material fact exist as to whether Wakasugi's pregnancy was a motivating factor in the decision to eliminate her position, we reverse and remand.

FACTS

On appeal from summary judgment, we set forth the following facts in the light most favorable to Wakasugi, the nonmoving party. In 2016, 3M hired Wakasugi as a customer account representative. In July 2021, she was promoted to the position of price change specialist, a position requiring a balance of analytical and customer service skills. The director of pricing operations for the United States and Canada, Jody Gaffney, testified that he hired Wakasugi because, among other things, he valued her customer-service background at 3M and her work ethic. Four other price change specialists were hired in mid-2021, and three of them had the same job grade as Wakasugi. During her time in this position, Wakasugi received positive performance reviews in 2021 and 2022.

On October 5, 2022, Wakasugi emailed Joyce Hatch, who directly supervised the price change team, that she was pregnant and that she planned to take parenting leave in

March 2023. Wakasugi applied for parental leave through the company's third-party leave administrator and was approved.

Hatch obtained Wakasugi's permission to tell her supervisor, Gaffney,[1] about the pregnancy and upcoming leave. Gaffney could not recall exactly when he learned of Wakasugi's pregnancy, but stated he would "bet money" that Hatch informed him, and that "knowing [Hatch] and our relationship," it would have been "shortly thereafter" Hatch received Wakasugi's October 5, 2022 email.

Later that October, Gaffney received a call from the newly appointed marketing operations director, Heather Blasingame, who was attending a week-long conference to plan a corporate restructuring set to occur by the end of March 2023. Blasingame's supervisor, Nancy Mallory, had been asked in June 2022 to restructure the company's global marketing organization by eliminating positions deemed unnecessary or transferable to lower-cost global service centers.

Mallory intended, initially, to eliminate the entire five-person price change team, but at the conference, Blasingame convinced her that the team's work was essential and would be difficult to reassign. At the end of the conference, Blasingame was told that one of the team's positions must be eliminated by March 23, 2023.

Blasingame called Gaffney and informed him that the price change team needed to be reduced by one employee for the upcoming year. In a brief call, with "no deep dive,"

[1] After Gaffney hired Wakasugi, he was her direct supervisor for only four months before Hatch assumed this supervisory role. After that, Gaffney remained the team's second-level supervisor and communicated regularly with Hatch until he retired in November 2022.

Blasingame asked him, "[W]ho would you select at this point in time?" When Gaffney answered, "Wakasugi," Blasingame entered her name in a spreadsheet identifying her for termination.

On January 10, 2023, as part of the corporate reorganization, Blasingame met with Hatch and David Shute[2] to plan a management transition of the price change team from Hatch to Shute. During the meeting, Hatch stated that Wakasugi was pregnant, with a due date around March, and that she would go on maternity leave.

Later that same day, Blasingame emailed Shute informing him that the price change team would be reduced by one employee at the end of March 2023. The email read:

> The headcount impact of the 1 FTE will come out of the USAC area—Sam Wakasugi—which will be a Q1/Q2 headcount reduction. I have not yet heard back from HR/[Mallory] on how separations tied to [the reduction-in-force] will take place. I anticipate learning more about communications and timing shortly. . . .

On January 25, 2023, Blasingame forwarded an email to Mallory that Blasingame sent to 3M's people relations manager Brian Jackson. The email sent to Jackson simply advised that one position would be eliminated and that the process for a review by human resources and the legal department needed to occur. Even though Mallory was copied on the original email to Jackson, Blasingame forwarded the email again to Mallory with one change: in the body of the forwarded email, Blasingame wrote "**Samantha Wakasugi**" in bold letters.

[2] Shute had no previous experience working with Wakasugi or any other member of the price change team.

When a reduction in force does not eliminate an entire team, 3M's policy requires that a termination of a specific person's position be based solely on their score in a skills assessment. Senior manager of human resources Ross Kent stated that preselection of employees for a reduction-in-force is strictly prohibited. Before a skills assessment is completed, directors conducting a reduction-in-force are to discuss positions only, and not the persons occupying them.

Half of the scoring on the skills assessment is based on an employee's performance ratings, and the other half is determined by job-specific criteria. Managers select three job-related skills for evaluation, and a human-resources employee adds two standardized skills used in all reduction-in-force cases involving customer operations. The employee with the lowest overall score has their position eliminated.

On January 31, 2023, the morning of the day that the skills assessment later took place, Hatch submitted her formal 2022 year-end review of Wakasugi, rating her performance as "Effective." The evaluation contained no criticisms of Wakasugi's work, complimented her on her contributions in using a "blocked line tool" and in strengthening relationships within the company, and ended with "Looking forward to your accomplishments in 2023!"

Later that day, Blasingame, Hatch, and Kent met over a conference call to conduct a skills assessment of Wakasugi and the other price change specialists. Blasingame and Hatch met before the assessment "to come up with detailed skills" and selected: analytical skills, process and project management, and communication abilities. When they determined the components of the skills assessment, each knew that Wakasugi was

pregnant. Before the meeting, Kent reviewed the past performance evaluations for all five of the pricing team employees and assigned them identical scores of 2, which meant "effective performance" that meets expectations.

Blasingame and Hatch scored Wakasugi the lowest on their part of the assessment. After the scoring was concluded, Kent first learned that Wakasugi was pregnant.

Wakasugi points to various evidence in the record, much of it disputed by 3M, to support her claim that the skills assessment was pretextual and that her position had already been selected for termination. She cites Blasingame's deposition testimony to assert that Blasingame disclosed to Hatch—before the skills assessment took place—that the price change team was "going to be impacted by one head count and . . . that Jody Gaffney had previously identified Sam Wakasugi as that individual." Wakasugi also notes the testimony of Kent and Hatch to assert that Blasingame, who had never reviewed Wakasugi's work, took an active role in scoring Wakasugi. Wakasugi further identifies stark disparities in the scoring and comments section and asserts that the negative comments that she received conflicted with Hatch's year-end performance review submitted earlier that day. Moreover, she argues that she was hired for her customer-service skill set, which was different from her co-workers but of no less value, and that the subjective skills assessment did not capture or credit her for these skills.

In February 2023, shortly after the skills assessment, 3M informed Wakasugi that her position was being eliminated in 45 days as part of the company's restructuring efforts. Two days later, Wakasugi met with Hatch to discuss the company's decision. Hatch told her that there were no performance issues and that she did not know why 3M chose her for

dismissal. According to Wakasugi but disputed by Hatch, Hatch told her that the decision was "poor timing with the baby due soon," and to look on the bright side because she could now spend all her time and energy preparing to give birth and raising her child.

Wakasugi obtained counsel. 3M ultimately paid Wakasugi her full parental-leave benefits pursuant to its existing leave policy, which allows employees on an approved leave of absence when their job is eliminated to complete any paid leave before separation. Wakasugi began her parental leave on March 14, 2023, and it ended on July 3, 2023.

In August 2023, Wakasugi sued 3M, alleging violations of the Minnesota Human Rights Act (the Human Rights Act), Minn. Stat. §§ 363A.01-.50 (2024), and the Minnesota Parenting Leave Act (the Parenting Leave Act), Minn. Stat. §§ 181.940-.44 (2024). Wakasugi alleges that 3M discriminated against her based on her pregnancy and her request for parental leave.

After discovery, 3M moved for summary judgment on each count, which the district court granted. The court determined that Wakasugi was laid off during a bona fide reduction-in-force, and that she failed to make an "'additional showing' that her pregnancy was a factor in the decision to select her position for elimination." Concluding that Wakasugi's "only evidence of pregnancy discrimination is that she happened to be pregnant at the time of the [reduction-in-force]," the district court dismissed her claims under the Human Rights Act. The court also determined that Wakasugi's claim under the Parenting Leave Act failed because she could not make an "additional showing" that her leave request "actually factored into the decision to eliminate her position."

Wakasugi appeals, challenging the summary dismissal of her pregnancy-discrimination claims under these two acts.

DECISION

We review a district court's grant of summary judgment de novo. *Henry v. Indep. Sch. Dist. #625*, 988 N.W.2d 868, 880 (Minn. 2023). "In doing so, we examine whether there are any genuine issues of material fact and whether the district court properly applied the law." *Id.* Our analysis views the evidence in the light most favorable to the nonmoving party—here, Wakasugi—and we resolve all doubts and factual inferences against the moving party, 3M. *Id.* "[W]e do not weigh facts or make credibility determinations." *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020). When evaluating a claim on summary judgment, courts are not to usurp the role of a jury; when reasonable persons might draw different legal conclusions from the evidence presented, summary judgment is inappropriate. *Id.* at 232.

I. Wakasugi's Human Rights Act Claim

On appeal, Wakasugi does not challenge the district court's determination that there was a bona fide reduction in force. Rather, she argues that, under Minnesota law, the record and conflicting testimony create genuine issues of material fact as to whether 3M selected her position for elimination because of her pregnancy status and request for parenting leave. We agree. Construing the evidence in the light most favorable to Wakasugi we conclude that material, disputed facts exist as to whether Wakasugi's pregnancy and upcoming parenting leave were substantial causative factors in 3M's decision to eliminate

her role as a price change specialist and as to whether the January 31 skills assessment was a pretext for discrimination.

"Employment relationships are generally at-will in Minnesota, so an employer may discharge an employee for any reason or no reason and an employee is under no obligation to remain on the job." *Hanson v. Dep't of Nat. Res.*, 972 N.W.2d 362, 372 (Minn. 2022) (quotation omitted). But under the Human Rights Act, "[e]xcept when based on a bona fide occupational qualification, it is an unfair employment practice" for an employer to discharge an employee because of sex. Minn. Stat. § 363A.08, subd. 2(2). "'Sex' includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth." Minn. Stat. § 363A.03, subd. 42. "When a substantial causative factor entering into the decision to discharge an employee is based upon gender or a status of pregnancy, the [Act] affords the employee remedies against the employer including an action for the recovery of damages, injunctive relief, and costs and attorney fees." *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 624 (Minn. 1988).

On appeal, Wakasugi agrees that her discrimination claim is based upon circumstantial evidence. She also agrees that, because her claim rests on circumstantial evidence, the three-part burden-shifting framework set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) applies. "Under this framework, a plaintiff must first make out a prima facie case of discrimination." *Hansen v. Robert Half Int'l, Inc.*, 813 N.W.2d 906, 918 (Minn. 2012). Once the plaintiff establishes a prima facie case, "the burden then shifts to the employer to articulate a legitimate and nondiscriminatory reason for the adverse employment action." *Id.* If the

employer satisfies this burden, then the plaintiff must "put forward sufficient evidence to demonstrate that the employer's proffered explanation was pretextual." *Id.* "[E]ven if an employer has a legitimate reason for the discharge, a plaintiff may nevertheless prevail if an illegitimate reason more likely than not motivated the discharge decision." *McGrath v. TCF Bank Sav., fsb*, 509 N.W.2d 365, 366 (Minn. 1993) (quotation omitted). Ultimately, whether discrimination occurred is a question of fact. *LaPoint v. Fam. Orthodontics, P.A.*, 892 N.W.2d 506, 514 (Minn. 2017).

A. Wakasugi established a prima facie case of discrimination.

To establish a prima facie case of discrimination under the Human Rights Act, a party must typically show that (1) she is a member of a protected class; (2) she was qualified for the job from which she was discharged; (3) she was discharged; and (4) her employer hired "a nonmember of the protected class to do the same work." *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 442 (Minn. 1983). Recognizing that "[i]t may . . . be impossible for the aggrieved employee to meet the fourth requirement" in a reduction-in-force situation, our supreme court, in a Human-Rights-Act case, adopted a "modified version" of the prima facie test first used by the Eighth Circuit Court of Appeals in a claim arising under the Age Discrimination in Employment Act. *Dietrich v. Canadian Pac. Ltd.*, 536 N.W.2d 319, 324 (Minn. 1995) (citing *Holley v. Sanyo Mfg., Inc.*, 771 F.2d 1161, 1165-66 (8th Cir.1985)).

This modified version requires a plaintiff to satisfy the first three prongs of a prima face case and then come forward with some additional evidence "that her sex was a factor in the termination decision." *Hansen*, 813 N.W.2d at 918-19; *see also Yates v. Rexton, Inc.*,

267 F.3d 793, 799 (8th Cir. 2001) (stating that a plaintiff in a reduction-in-force action involving age discrimination must show as a fourth prima facie prong that "age was a factor in the employer's decision to terminate him"). The Eighth Circuit has explained that this "additional showing inquiry is not a significant hurdle for an employment discrimination plaintiff." *Yates*, 267 F.3d at 799 (quotation omitted). Rather, it merely requires some additional evidence—besides the mere fact of discharge—from which, in the absence of an explanation from the defendant, a fact-finder may reasonably infer that a plaintiff's protected status contributed to the elimination of her position. *See Dietrich*, 536 N.W.2d at 324-25; *Hutson v. McDonnell Douglas Corp.*, 63 F.3d 771, 778-79 (8th Cir. 1995). This additional showing may "take many forms," and the "factually-oriented, case-by-case nature of [discrimination] claims requires that we not be overly rigid in our consideration of the evidence of discrimination a plaintiff may offer." *Dietrich*, 536 N.W.2d at 324 (quoting *Holley*, 771 F.2d at 1165-66).

Upon summary judgment, 3M does not dispute that Wakasugi satisfied the first three prongs of the prima facie case. But it asserts that Wakasugi failed to make the required "additional showing" to satisfy her prima facie case, arguing that she presented a "series of speculative conclusions unsupported by the record." In particular, the company contends that no evidence supports Wakasugi's assertion that Gaffney even knew that she was pregnant in October when he identified her to Blasingame as the price change specialist whose position should be eliminated. The company also claims that only speculation supports Wakasugi's assertion that her pregnancy and upcoming leave

influenced Gaffney's and Blasingame's decision to select her well before any skills assessment was conducted. We disagree.

The record includes evidence that after Wakasugi informed Hatch of her pregnancy and application for leave, Hatch relayed the information to Gaffney, reportedly stating, "Guess what? Samantha is pregnant." Gaffney, the director of pricing operations, was set to retire in November 2022, and testified that he and Hatch spoke often. Although he could not remember exactly when he learned of Wakasugi's pregnancy, he stated he would "bet money" that Hatch informed him, and that "knowing [Hatch] and our relationship," it would have been "shortly thereafter" Hatch received Wakasugi's October 5, 2022 email. 3M's suggestion that Gaffney may not have learned about the pregnancy until after his retirement in November ignores this testimony and that of Hatch, who said unequivocally that she told Gaffney about the pregnancy while he was still employed at 3M.

Based on Gaffney's testimony that Hatch "would have let [him] know" about Wakasugi's pregnancy "before" his retirement, and viewing this evidence in the light most favorable to Wakasugi, as we must do upon summary judgment, the record supports a reasonable inference that Gaffney knew of Wakasugi's pregnancy before his call with Blasingame in later October.

The context for that call further supports Wakasugi's prima facie case. From October 17 to October 22, Blasingame attended a conference to plan a corporate restructuring set to occur by the end of March 2023. As the conference was ending, Blasingame learned that the position of one price change specialist had to be eliminated by March 2023. She then called Gaffney, informed him that the team needed to be reduced

by one person for 2023, and asked him who should be cut. *Id.* In a brief call—before any skills assessment was planned or even any criteria developed for it—Blasingame asked for his recommendation; Gaffney selected Wakasugi. Gaffney said he did so because "it was a feeling that she—forgive this—didn't get it." He admitted that during the time he managed her, he had never documented any concerns about Wakasugi's performance or this feeling.

After this October call, Blasingame specifically identified Wakasugi as the team member to be cut in a spreadsheet and later sent two January emails to colleagues Mallory and Shute that would allow a fact-finder to reasonably infer that Wakasugi had already been chosen to be cut from the team. Blasingame's January 10 email sent to Shute named Wakasugi as the employee selected to lose her job. Shute testified that this email implies that Blasingame had finalized Wakasugi's selection. Notably, Blasingame sent this email after a call that same day with Shute and Hatch, during which Hatch had informed Blasingame that Wakasugi was pregnant and would be taking leave in March, the same time the reduction-in-force would occur.

Wakasugi contends that all Blasingame then knew about her was that "she was pregnant and going on leave at the same time the team—which Blasingame herself had fought to keep intact—needed to be reduced from five to four." She contends that a "reasonable jury could conclude that [she] was selected not out of animus or hostility, but because her pregnancy and leave made her the most 'convenient' choice." We agree that Wakasugi had presented evidence sufficient to allow a reasonable jury to reach that conclusion.

In addition, the forwarded email that Blasingame sent to Mallory on January 25 made one notable change in the original email sent to Jackson. The original email to Jackson, on which Mallory was already copied, stated only that one position would be eliminated, while Blasingame wrote "**Samantha Wakasugi**" in bold letters in the body of the forwarded email.

Accordingly, viewing this record evidence in the light most favorable to Wakasugi as the nonmoving party, we conclude that Wakasugi has met her burden to make a prima facie case of discrimination.

B. 3M has articulated a legitimate, non-discriminatory reason for eliminating Wakasugi's position.

Because Wakasugi has articulated a prima facie case, the burden shifts to 3M to "articulate a legitimate, nondiscriminatory reason for its conduct." *Henry*, 988 N.W.2d at 883. The company has met this burden by producing evidence that it was conducting a legitimate reduction-in-force, which Wakasugi does not now dispute, and that as part of that process, Wakasugi's score on the weighted skill assessment was the "sole basis for selecting [her] position for elimination." Because 3M has satisfied the test's second prong, the burden returns to Wakasugi to "put forward sufficient evidence to demonstrate that the employer's proffered explanation was pretextual." *Hansen,* 813 N.W.2d at 918.

C. A genuine issue of material fact exists as to whether the proffered reason for eliminating Wakasugi's position was pretextual.

Wakasugi can satisfy her burden to show pretext "either directly by persuading the court that a discriminatory reason likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence."

Sigurdson v. Isanti County, 386 N.W.2d 715, 720 (Minn. 1986) (quotation omitted). Our supreme court has explained that for Wakasugi to do so, "proof that the defendant's explanation is unworthy of credence may be quite persuasive." *Hoover v. Norwest Priv. Mortg. Banking*, 632 N.W.2d 534, 545 (Minn. 2001) (quotation omitted). And "[i]n appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is covering up a discriminatory purpose" as long as they could infer the reason is not only pretext but pretext for discrimination. *Id.* at 545-46 (quotation omitted).

Wakasugi asserts that she presented sufficient evidence, when viewed in the light most favorable to her, to show that a genuine issue of material fact exists as to whether 3M's explanation for why she was selected for discharge is false. We agree that she has produced sufficient competent evidence to make summary judgment inappropriate on the issue of pretext.

First, to demonstrate that 3M's reliance on the skills assessment score was pretext for a predetermined decision to eliminate her position, Wakasugi cites record evidence that, well before the skills assessment occurred, she had already been identified as the person to lose her position. She challenges 3M's explanation that she was identified as a temporary "placeholder" by highlighting the October 2022 spreadsheet identifying her for termination, as well as Blasingame's January 10 and January 25 emails, discussed above, that specifically name Wakasugi as the pricing team member whose position would be eliminated. She disputes 3M's contention that Wakasugi was a temporary "placeholder" by contending that 3M has no formal policy referencing or supporting the use of a

"placeholder" process in reduction-in-force cases; nothing in the emails suggested that the identification of Wakasugi was temporary; two of 3M's own employees, Shute and Mallory, testified that the January 10th email could be read as communicating that Wakasugi was the person selected for the one-person reduction; and neither Mallory nor Blasingame explained the January 25, 2023 forwarded email to Mallory where Blasingame had added "**Samantha Wakasugi**" in bold letters when Blasingame knew Wakasugi was pregnant.

In addition, Wakasugi presented evidence that 3M deviated from its historical practice in conducting a reduction in force. Kent testified about the practice that 3M directors were to follow in identifying positions—and not persons—in reduction-in-force decisions. Specifically, Kent testified that "whenever we are going through any of these reduction conversations with directors and vice presidents—and there are many, many, many meetings to talk about this—there are org charts listed with no names. . . . We are just talking about boxes, positions." Moreover, evidence shows that four of the five price change specialists had the same job grade as Wakasugi; accordingly, inserting a specific name, instead of a position as a "placeholder" was unnecessary to calculate the financial benefits of a headcount reduction.

Wakasugi next cites record evidence that Blasingame's decision to inform Hatch before the skills assessment test that Gaffney had previously identified Wakasugi as the employee to be impacted by the one-person reduction—and withholding that information

from human-resources manager Kent[3]—further supports the reasonable conclusion that her discharge was predetermined before the test occurred. She asserts that the timing of that conversation is material because marketing operations director Blasingame was informing a subordinate, Hatch, that Hatch's previous boss had already decided who should be cut from the pricing team. Wakasugi further contends that a reasonable inference is that Blasingame was attempting to influence Hatch's scoring on the upcoming skills assessment in "a predetermined direction."

3M cites Hatch's version of the conversation to deny that it occurred before the skills assessment and states that any difference in memory is not material. But Blasingame clearly testified that she told Hatch about the head count reduction *before* the skills assessment and that "Gaffney had previously identified Sam Wakasugi as that individual." We must view this conflicting testimony in the light most favorable to Wakasugi, the nonmoving party, and draw any reasonable inferences in her favor. Accordingly, we agree that a reasonable person could infer that by communicating Gaffney's previous decision to Hatch, Blasingame was attempting to influence Hatch's scoring on the upcoming test.

The record also shows contradictory evidence about who contributed to the actual scoring of Wakasugi and the other price change specialists during the skills assessment. Kent testified that half of the scoring on the skills assessment was based on job-specific criteria. This part of the test was created by Blasingame and Hatch after each knew that Wakasugi was pregnant and had sought parental leave coinciding with the one-person

[3] Kent testified that any preselection of an employee before the skills assessment was prohibited and would be a "red flag" requiring assignment of a new assessor.

reduction to the price change team. The assessment's other half was based on an employee's performance ratings from previous years. After Kent assigned all five of the pricing team employees identical scores based upon past performance evaluations, he documented the scores and comments provided by Hatch and Blasingame on analytical skills, process and project management, and communication abilities.

Blasingame testified that, because she had no interactions with Wakasugi before the assessment, and had not reviewed any of her projects, all the scores came directly from Hatch. Despite Blasingame's lack of knowledge of Wakasugi's performance, Kent and Hatch each testified that Blasingame contributed to the ratings and the comments recorded in the notes. In fact, Kent testified that it was Blasingame "talking more" during the assessment and not Hatch, who had the most knowledge about Wakasugi's performance.

On a scale of 1 to 3 (with 3 being the highest), Wakasugi was the only employee to receive a score of 1 and the only one who failed to earn any 3s. The comment section revealed that Wakasugi was the only price specialist who received any negative feedback, while others received glowing reviews, sometimes with identical language. Her comments read as follows:

> Will do what she's asked but not always proactive. Does not always follow through on commitments. Request was made to follow up on Blocked Line tool and was not done in a timely manner. Has difficulty synthesizing data and information to make decisions. Difficulty understanding, digesting, and applying information from price waterfalls, etc. e.g., logic areas with PFDC data. Requires more support to understand, build, and create data connectivity. Lacks deep understanding of pricing structures.

Wakasugi disputed these criticisms in her deposition, testifying that she was "never once told I had missed a deadline or I wasn't up-to-date on certain projects on time." 3M argues that her sworn testimony refuting every critique in the comments should be disregarded as "self-serving." But the lack of any previous documentation from her managers criticizing her skills and contemporaneous documentation support Wakasugi's testimony. On the same day that she was scored the lowest on the skills assessment, Hatch thanked her for "all the great work [she had] accomplished in 2022." In addition, the review praised Wakasugi for the very tasks that Hatch and Blasingame criticized in the skills assessment, including the Blocked Line Tool and PFDC efforts.[4] Hatch concluded the review by stating that she was looking forward to Wakasugi's accomplishments in 2023.

Similarly, Wakasugi presented evidence that she met with Hatch to discuss 3M's decision to eliminate her position. Although 3M contends that Hatch was the key person providing information during the skills assessment, she told Wakasugi that she did not know why Wakasugi had been chosen or the reasons behind the decision. Hatch assured Wakasugi that there were no performance issues. According to Wakasugi, Hatch acknowledged that the decision was "poor timing with the baby due soon" and told her to look on the bright side as she could now spend all her time and energy preparing to give birth and raising her child. Hatch denies making these comments, but when reviewing a

[4] The review provided in pertinent part: "The PFDC update management and training helped our business partners to capture notification requirements in a timely manner which provided consistency for our customers. Your work with the blocked line tool helped standardize usage across ECO and also strengthened relationships with OTC."

grant of summary judgment, we do not determine issues of credibility. *Henry*, 988 N.W.2d at 880.

3M asserts in any case that Hatch's sympathetic comments are stray comments by a non-decisionmaker that do not reflect a discriminatory motive by either Gaffney or Blasingame. But Hatch's key role in the skills assessment, which the company asserts was the sole reason for the elimination of Wakasugi's position, gives those statements more import. *See Arraleh v. County of Ramsey*, 461 F.3d 967, 975 (8th Cir. 2006) (noting that federal courts have "carefully distinguished between comments which demonstrate a discriminatory animus in the decisional process or *those uttered by individuals closely involved in employment decisions*, from stray remarks in the workplace, statements by nondecisionmakers, or statements by decisionmakers unrelated to the decisional process" (emphasis added) (quotation omitted)); *Rolon v. Pep Boys-Manny, Moe & Jack*, 601 F. Supp. 2d 464, 467, 469 (D. Conn. 2009) (concluding that an employer's comments including "Why are you working? You don't want to be here when you have a new baby at home," sufficiently supported an inference of discrimination on the basis of sex and pregnancy). Moreover, animus and hostility are not prerequisites for a discrimination claim; a plaintiff need only present sufficient evidence that their protected characteristic "actually motivated" the adverse employment action. *See LaPoint*, 892 N.W.2d at 514.

In addition, 3M dismisses Hatch's comments as conflating adequate performance, as reflected in Wakasugi's two positive performance reviews, with a determination of the relative skills of the pricing team, upon which its reduction-in-force decision was solely made. But Wakasugi contends that "[p]erformance is skills in action" so the company's

attempted distinction is invalid. She asserts that a closer look at the reviews of the other price specialists shows that each had identified areas for improvement, and she details those performance issues for three of the specialists. Wakasugi further cites Hatch's admission that she routinely asked senior analysts to help other price specialists, and not just Wakasugi. Given the content of these evaluations and Hatch's testimony, 3M's claim that Wakasugi had the lowest comparable skills cannot be established at this stage of the litigation.

We emphasize again that neither the district court nor we may make credibility determinations or weigh evidence upon summary judgment. *Henry*, 988 N.W.2d at 880. We express no opinion regarding the merits of Wakasugi's claim, but note that at this procedural posture, we are required to construe the evidence and all reasonable inferences in the light most favorable to her as the nonmoving party. In so doing, we conclude that a reasonable juror could determine that the timing of her pregnancy and maternity leave when the company needed to reduce her five-person unit by one person was a motivating factor in the decision to eliminate her position. Based on this evidence, we conclude that Wakasugi has established a genuine issue of material fact as to whether the stated reason for her dismissal was pretextual. Accordingly, we reverse the entry of summary judgment on Wakasugi's claim under the Minnesota Human Rights Act and remand to the district court for trial.

II. Wakasugi's Parenting Leave Act Claim

Wakasugi next challenges the district court's grant of summary judgment dismissing her Parenting Leave Act claim. Relying on a 2023 amendment to the Parenting

Leave Act, she contends that the legal analysis to evaluate this claim is the same framework that applied to her Human Rights Act claim and that the district court similarly erred in dismissing this claim. We agree that the district court erred in granting summary judgment because material facts exist as to whether 3M eliminated Wakasugi's position in retaliation for her request for parenting leave; specifically, whether the January 31 skills assessment was a pretext for discrimination.[5]

3M contends that Wakasugi waived her argument that she established a prima facie case of retaliatory discrimination by failing to argue the issue at summary judgment. We disagree. The record reflects that Wakasugi asserted a theory of liability under the Parenting Leave Act throughout the summary-judgment proceedings. Although Wakasugi and the district court may have oversimplified the elements of a prima facie case of discrimination under the Parenting Leave Act by assuming that the related but distinct prima facie elements of the Human Rights Act claim applied, Wakasugi nevertheless

[5] Wakasugi asserts that the 2023 amendment to the Parenting Leave Act applies to her claims. During the 2023 legislative session, the Legislature amended a subdivision of the Parenting Leave Act that relates to employer retribution for an employee requesting or obtaining a parental leave of absence. 2023 Minn. Laws ch. 53, art 11 § 30, at 1293 (codified at Minn. Stat. § 181.941, subd. 3 (2024)). This change became effective on July 1, 2023.

Generally, we "apply the law as it exists at the time" we rule on a case, but "[a]n exception to this rule exists when rights affected by the amended law were vested before the change in the law." *Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000). Because 3M does not argue on appeal that the 2023 amendment to the Parenting Leave Act affected its vested rights, we apply the 2023 version of the Parenting Leave Act. And we note that our conclusion that Wakasugi met her burden on the prima facie and pretext prongs of the *McDonnell-Douglas* analysis would be the same under either version of the Parenting Leave Act.

asserted that she met this test and challenged 3M's proffered nondiscriminatory reason for her termination as pretextual.

The Parenting Leave Act provides that "[a]n employer must grant an unpaid leave of absence to . . . a female employee for prenatal care, or incapacity due to pregnancy, childbirth, or related health conditions." Minn. Stat. § 181.941, subd. 1(a)(2). And no employer may "discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee for requesting or obtaining [such] leave of absence." *Id.*, subd. 3. A claim under this subsection is, in essence, a retaliatory-discharge claim.

Like claims of discriminatory practices under the Human Rights Act, a modified burden-shifting *McDonnell-Douglas* analysis applies to these claims of retaliatory discharge arising under the Parenting Leave Act. *Hubbard*, 330 N.W.2d at 444-45. To "establish a prima facie case where an alleged retaliatory discharge is involved, an employee must establish: (1) statutorily-protected conduct by the employee; (2) adverse employment action by the employer; and (3) a causal connection between the two." *Id.* at 444 (analyzing a claim of retaliatory discharge under the Human Rights Act alleging that an employee was discharged for filing a charge of discrimination against their employer); *see also Hanson*, 972 N.W.2d at 372 n.16 (recognizing "*McDonnell Douglas* as the appropriate framework" to apply in retaliatory-discharge claims under the Minnesota Whistleblower Act); *Gangnon v. Park Nicollet Methodist Hosp.*, 771 F. Supp. 2d 1049, 1054 (D. Minn. 2011) (applying the prima facie test detailed in *Hubbard* to retaliatory-discharge claim under the Parenting Leave Act).

Wakasugi has demonstrated the necessary elements of the retaliatory-discharge prima facie case under *Hubbard*. Wakasugi engaged in statutorily protected conduct when she requested parental leave for her pregnancy and experienced an adverse employment action when she was discharged. And 3M's "knowledge of [Wakasugi's] protected activity along with close temporal proximity to the adverse action suffices to establish a causal connection." *Hanson*, 972 N.W.2d at 374, 372 n.18 (noting that despite federal cases determining otherwise, Minnesota courts "have never mandated anything beyond close temporal proximity to establish a causal connection for an employee's prima facie case" of retaliatory discharge); *see also Hubbard*, 330 N.W.2d at 445 ("A causal connection may be demonstrated indirectly by evidence of circumstances that justify an inference of retaliatory motive, such as a showing that the employer has actual or imputed knowledge of the protected activity and the adverse employment action follows closely in time.").

Because Wakasugi established a prima facie case of retaliatory discharge, "the burden of production shifts to the employer to provide some legitimate, nondiscriminatory reason" for the adverse employment action. *Hanson*, 972 N.W.2d at 373 (quotation omitted). As discussed above, 3M met this burden by producing evidence that it was conducting a legitimate reduction-in-force, and, as part of that process, Wakasugi's score on the weighted skills assessment was the sole reason 3M selected her position for elimination. Accordingly, the burden shifted back to Wakasugi to demonstrate that this explanation was pretextual. *Hansen*, 813 N.W.2d at 918. And, as in our foregoing analysis of pretext under the Human Rights Act, we conclude that a reasonable person could find that the timing of Wakasugi's request for parental leave when the company sought to

reduce its pricing team by one person motivated 3M to eliminate her position. Because Wakasugi has raised a genuine issue of material fact as to whether 3M's stated reason for her dismissal was pretextual, we reverse the entry of summary judgment on Wakasugi's claim under the Parental Leave Act and remand to the district court for trial.

Reversed and remanded.