**MISSOURI COURT OF APPEALS**
**WESTERN DISTRICT**

**PERRY ALLEN, Appellant,**
**v.**
**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION, Respondent.**

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DOCKET NUMBER WD87287

DATE: March 4, 2025

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Appeal From:

Jackson County Circuit Court
The Honorable J. Dale Youngs, Judge

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Appellate Judges:

Division Two: Janet Sutton, Presiding Judge, Alok Ahuja, Judge, and Mark D. Pfeiffer, Judge

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Attorneys:

David Lunceford, Lee's Summit, MO, counsel for Appellant.
Victoria Arends, Lee's Summit, MO, co-counsel for Appellant.
Christina Nielsen, Arlington, VA, co-counsel for Appellant.

Michael Polwort, Jefferson City, MO, counsel for Respondent.
Melinda Grace-Beasley, Jefferson City, MO, co-counsel for Respondent.
Kimberly Jones, Kansas City, MO, co-counsel for Respondent.
Terri Parker, Jefferson City, MO, co- counsel for Respondent.

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# MISSOURI APPELLATE COURT OPINION SUMMARY

## MISSOURI COURT OF APPEALS
## WESTERN DISTRICT

**PERRY ALLEN, Appellant,**

**v.**

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION, Respondent.**

WD87287 Jackson County

Before Division Two Judges: Janet Sutton, P.J., Alok Ahuja, and Mark D. Pfeiffer, JJ.

Perry Allen (Allen) is a white male over the age of forty employed by the Missouri Department of Transportation (MoDOT). He filed a petition against his employer for race, sex, and age discrimination, retaliation, and hostile work environment after filing a charge of discrimination with the Missouri Commission on Human Rights.

In March 2015, M.V., the Director of MoDOT's audits and investigations division, interviewed Allen as part of an investigation into another employee's alleged misconduct. Allen alleged that M.V.'s conduct was discriminatory and created a hostile work environment, but Allen did not recall M.V. saying anything derogatory about his sex, race, or age. After the March 2015 interview, Allen and M.V. only interacted three or four times before his termination. M.V.'s office was located in Jefferson City, Missouri.

D.H. was the human resources manager for the Kansas City district. In the nine years that Allen and D.H. worked together, they only had three or four negative interactions. In March 2020, D.H. and Allen met to discuss an employee matter. D.H. "shouted over" Allen during a phone conversation. After the meeting, D.H. went to Allen's office and was irate, agitated, and continued to yell at Allen. In August of 2019, Allen was placed on disciplinary probation.

C.R., MoDOT's Kansas City district engineer, terminated Allen in October 2021. C.R. was the only individual with authority to terminate employees in the Kansas City district. C.R. stated he made the decision to terminate Allen after M.V. informed him that audits and investigations discovered Allen sent inappropriate text messages on a work-issued phone. D.H. was not involved in the termination decision and C.R. did not consult with M.V. regarding Allen's discipline. Allen admits that C.R. did not discriminate against him in C.R.'s personal capacity.

MoDOT filed a motion for summary judgment which was granted. Allen appeals.

**AFFIRMED.**

**Division Two holds:**

1. The trial court did not err in granting summary judgment on Allen's discrimination claims. Allen only alleges discriminatory conduct by M.V. and D.H. Yet, Allen failed to produce any record evidence indicating that M.V. or D.H. had any influence on, or provided input to, C.R. regarding his decision to terminate Allen. Therefore, Allen's admission that C.R. did not discriminate against him in his personal capacity is fatal to his discrimination claims.

2. The trial court did not err in granting summary judgment on Allen's retaliation claim. Allen admitted that C.R. did not retaliate against him in his personal capacity. The summary judgment record does not establish that C.R. relied on any recommendation from M.V. nor does it establish that he decided to terminate Allen because he consulted with D.H. Without any such evidence, Allen is unable to establish that any retaliatory motive by M.V. or D.H. was imputed to C.R.

3. The trial court did not err in granting summary judgment on Allen's hostile work environment claim. Allen cannot establish a causal link between the alleged discrimination and the tangible employment action because of his admission that C.R. did not discriminate against him in his personal capacity. A fact finder also could not reasonably find that M.V. and D.H.'s interactions with Allen were so severe or pervasive as to cause an abusive working environment.

4. Although the trial court's judgment does not mention a finding regarding the continuing violation theory, we find that the trial court did not err to the extent that it found the untimely acts of alleged discrimination were not part of a continuing violation. Allen only cites to a few isolated, unconnected incidents that spanned a five-year period before his termination—not day-to-day discriminatory events occurring regularly.

**Opinion by: Janet Sutton, Presiding Judge** March 4, 2025

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