Filed 11/17/16 Hessler v. County of Los Angeles CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LUZ HESSLER, Plaintiff and Respondent, v. COUNTY OF LOS ANGELES et al., Defendants and Appellants.	B263088 (Los Angeles County Super. Ct. No. BC505763) ORDER MODIFYING THE OPINION AND DENYING RESPONDENT'S PETITION FOR REHEARING (NO CHANGE IN THE JUDGMENT)

THE COURT:

It is ordered that the opinion filed in the above-entitled matter on October 27, 2016, be modified in the following manner:

On page 13, in the first sentence of part II, the words "causes of action" are deleted and replaced with "theories" so that the sentence now reads:

Hessler prevailed on two theories: discrimination based on disability and hostile environment harassment based on her disability.

In the last paragraph beginning at the bottom of page 18, the reference to "March 2011" is corrected to "March 2012" so that the sentence now reads:

Fourth, Hesler testified that in March 2012, Lopez gave Hessler her third choice of vacation dates, when Hessler was entitled to her first or second choice.

These modifications do not constitute a change in the judgment. Respondent's petition for rehearing is denied.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J. CHANEY, J. JOHNSON, J.

Filed 10/27/16 Hessler v. County of Los Angeles CA2/1 (unmodified version)

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

LUZ HESSLER, Plaintiff and Respondent, v. COUNTY OF LOS ANGELES et al., Defendants and Appellants.	B263088 (Los Angeles County Super. Ct. No. BC505763)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County, Michael P. Linfield, Judge. Reversed.

Schuler & Brown, Jack M. Schuler, and Tina Javaherian for Defendants and Appellants.

Gurvitz, Marlowe & Ferris, Ron F. Gurvitz, J. Scott Ferris, and Loren N. Meador for Plaintiff and Respondent.

Plaintiff Luz Hessler is a nurse employed by the County of Los Angeles (the County). Hessler sued the County and a coworker, Raquel Paxton, under the Fair Employment and Housing Act (FEHA) for disability discrimination, failure to reasonably accommodate her disabilities, and harassment based on a hostile work environment. A jury rejected Hessler's cause of action for failure to reasonably accommodate her disabilities, found in her favor on her discrimination and harassment claims, and awarded her $153,290 in damages. The court awarded Hessler her attorneys' fees in the amount of $1,282,810. The County and Paxton appealed from the judgment and certain postjudgment orders. We agree with the appellants that the record does not disclose substantial evidence of any unlawful acts against Hessler within the one-year period preceding the filing of Hessler's FEHA complaint. As a result, her claims are barred by the FEHA's statute of limitations. We therefore reverse the judgment.

FACTUAL AND PROCEDURAL SUMMARY

A. *October 2004 to September 2008*

In October 2004, Hessler began working as a nurse at the Barry J. Nidorf Juvenile Hall (BJN) in Sylmar. According to Hessler, Paxton (another nurse at BJN) harassed her constantly "[f]rom day one." In particular, Paxton: (1) imitated Hessler's Hispanic accent and mispronounced Hessler's name; (2) imitated Hessler's limp; (3) threw charts and files around Hessler; (4) slammed doors near Hessler; (5) monitored Hessler "constantly, excessively every day"; (6) called Hessler "that Mexican"; (7) ridiculed and made fun of Hessler; and (8) left messages on Hessler's beeper. Another coworker, Sandra Lopez, had also mocked Hessler's accent.

Hessler testified that she complained "constant[ly]" about the harassment and reported it "to the chain of command," including her supervisor and manager, her union, and the Equal Employment Opportunity Commission. For most of the relevant time, Hessler's

direct supervisor was Teodora Goga, and her manager was Blanca Meraz.

In August 2008, Hessler filed a complaint with the California Department of Fair Employment and Housing (DFEH), alleging that the County had discriminated against her based on her national origin. In particular, she alleged that Paxton (whom Hessler describes as black) "imitates my accent, uses the N-word in front of me, and has circulated a petition against me calling me derogatory names in her efforts to get me fired."[1] The "harassment," Hessler alleged, has "created a hostile work environment," which continued despite her complaints to management.

In September 2008, the County transferred Paxton to another juvenile facility.

B. *The 2008 Door-Slamming Incident*

On September 18, 2008, Hessler and her supervisor Goga attempted to meet with Meraz, the nursing manager. Meraz refused to talk with them and slammed her office door on Hessler's knee, injuring Hessler.[2] Hessler then took a 10-month medical leave of absence.

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[1] The alleged "petition" is a document Paxton prepared in May 2008 titled: "Formal letter of complaint." The document states that the signators "would like to place a formal complaint/grievance against [Hessler] . . . for continuously creating a [h]ostile and [n]egative [w]ork [e]nvironment." The letter described Hessler as "petulant, argumentative, demanding, spiteful, egomaniacal, with perpetual persecutory behavior toward all she has deemed a threat." A page with 14 signatures of Hessler's coworkers is attached.

[2] Whether Meraz hit Hessler's knee with a door was disputed at trial. Meraz testified that the door did not hit Hessler's knee. The County also offered the testimony of another witness to the incident, but the court excluded the testimony on the ground that the County was judicially estopped to deny the incident based on a stipulation reached in Hessler's worker's compensation cases. The County contends that

During that time, Hessler began psychological counseling with Dr. Anna Levi. Dr. Levi diagnosed Hessler with post-traumatic stress disorder and major depressive disorder. She supported Hessler's leave of absence with periodic notes to the County stating that Hessler was "incapable of returning to work" due to "work-related emotional distress" and "clinical depression."

In October 2008, while she was on leave, Hessler filed two claims for worker's compensation. One was based on the September 18, 2008, door-slamming incident, which allegedly caused injury to her knee "and psyche." (Capitalization omitted.) The second claim alleged a "cumulative" injury that began on October 1, 2004, and continued through October 1, 2008, in which she suffered from "psyche, emotions, hypertension, internal due to repetitive stress, harassment caused by Raquel Paxton, RN and others." (Capitalization omitted.)

In May 2009, Hessler's attorney and representatives of the County engaged in an interactive process concerning Hessler's return to BJN. Hessler's physicians had placed orthopedic restrictions on her work activities that precluded heavy lifting and prolonged walking or standing, among other activities. Dr. Levi informed the County that Hessler could return to work, and asked that Hessler be placed "in the same line of work and place because changing place/location and type of work is contraindicative for [Hessler's] emotional health." Dr. Levi added that Hessler "should not be overwhelmed with new tasks. It is important to keep [Hessler] free of hostile environment." At trial, Dr. Levi explained that she meant to communicate that the County "would have to probably relocate the people who were harassing her and the person who physically aggressed against her." There was no evidence, however, that Dr. Levi ever communicated this meaning to

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the court's ruling was error. Because we reverse the judgment on other grounds, we do not reach this question. We will assume for purposes of our analysis that Meraz hit Hessler's knee with the door.

the County or that she informed the County of the identity of the persons she believed were harassing Hessler. The County personnel involved in accommodating Hessler's return to work understood that Meraz was the person causing problems for Hessler. In June, the County transferred Meraz to a different facility; Meraz and Hessler did not work together again. Elizabeth Townsend replaced Meraz as the BJN nursing manager.

In June 2009, the DFEH determined that Hessler's September 2008 complaint was unfounded and provided Hessler with a right-to-sue letter.[3] Paxton was thereafter transferred back to BJN. Hessler did not file a civil action based upon the September 2008 DFEH complaint.

C. *July 2009 to March 2012*

In July 2009, Dr. Levi again authorized Hessler's return to work with the "restrictions" that she be returned "to the same location, shift, and . . . responsibilities to reduce possible negative effects on her health." She reiterated that it "is important to keep this patient free of hostile environment," but specified no particular action the County should take in that regard. Hessler returned to work at BJN in July.

Goga, Hessler's supervisor, was aware of Hessler's work restrictions. Goga accommodated the orthopedic restrictions by assigning Hessler to tasks that required less walking than other nursing positions, and she addressed Dr. Levi's psychological restrictions by scheduling Hessler to tasks that required fewer interactions with other nurses, including those who had been harassing her.[4] Goga also told Paxton not to speak to Hessler.

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[3] The court refused to allow the defendants to introduce the June 2009 right to sue letter, a ruling the appellants challenge on appeal.

[4] There was conflicting evidence at trial as to how well the County accommodated Hessler's work restrictions. In the special verdict, the jury found that the County reasonably accommodated Hessler's disabilities. Because we review the record in a light most

Despite Goga's efforts, Paxton (according to Hessler) remained "[v]ery aggressive [and] disrespectful" toward her. In December 2010, Hessler complained to Goga that Lopez had been imitating her accent and described an incident in which Paxton threw some charts on a counter. On one occasion in 2010 or 2011, Paxton pushed a chair in front of Hessler in an aggressive manner. Paxton also yelled and swore at her coworkers, which caused Hessler to experience stress and anxiety.

When Goga attempted to counsel Paxton regarding her behavior, Paxton would respond by yelling or laughing at Goga, and slamming doors behind her. Goga informed "the department" about Paxton's inappropriate conduct during the 2009-2011 period, but, according to Goga, the County did nothing to stop it. In March 2011, Goga began a medical leave of absence, then retired.

After Goga's departure, the County did not fill her supervisor position, and Townsend, the manager of the BJN facility, was present at the site only three or four times per week. As a result, there were times when neither a nursing supervisor nor a manager was on site. For each shift, however, one nurse was designated the "charge nurse" and given limited supervisorial authority. Sometimes, Paxton or Lopez was the designated charge nurse; other times, Hessler was in charge of her shift. Hessler believed that when Paxton was the charge nurse she would change Hessler's assignment in an attempt to overwhelm her.

From April 2011 through February 2012, Hessler complained to Townsend about various ways in which she believed her work restrictions were not being accommodated and of how the "harassment has never stopped." Hessler stated, for example, that on June 17, 2011,

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favorable to the judgment, our statement of facts reflects that determination. For the same reason, our factual statement reflects the jury's finding that the County and Paxton harassed and discriminated against Hessler.

Paxton and a male nurse made fun of her limp. On another occasion, Paxton asked probation staff members to translate Spanish even though Hessler could have performed the translation. After Hessler was placed in charge of a particular shift, she complained to Townsend that the nursing unit was "short of two nurses," and she had to "[w]alk back and forth for about [two] hours."

In December 2011, Paxton began a medical leave of absence that lasted until May 2012.

In November and December 2011, and January 2012, Hessler took several brief leaves of absence authorized by Dr. Levi. After she returned to work in January 2012, Hessler continued to experience psychological problems and depression, and her blood pressure was "out of control."

In January 2012, Hessler complained in writing to Townsend that the weekend nursing unit was understaffed when she was in charge. She requested an additional nurse be assigned to the shift. In February, Hessler wrote another letter requesting a fifth nurse for her weekend shift in which she quoted Townsend as telling her to " 'stop complaining; go home, if you don't feel well, tell your doctor you cannot work.' " Hessler added: "I need the 5th nurse on my weekends. I've been doing my work with only 4 nurses, for eleven months, since the evening supervisor is gone." She further complained that Lopez "still works on the schedule" and "moves [Hessler] as she pleases," despite Townsend's assurance that Lopez would "not touch the schedule."

Townsend testified that when she told Hessler to "[s]top complaining," go home, and see a doctor, she was referring to Hessler's complaints about her blood pressure. Townsend further stated that adding staff on weekends as Hessler requested was not possible.

Dr. Levi testified at trial that Hessler's complaints to her about the "harassment" Hessler experienced at work had been consistent and

continuous since Hessler began counseling in October 2008.[5] When asked about the most recent incidents of which Dr. Levi was aware when someone called and left harassing messages on Hessler's phone, Dr. Levi said they occurred in 2008 or 2009. The last time she was aware that anyone had imitated Hessler's accent or limp occurred in 2011. Dr. Levi said that Hessler had been "ridiculed" by coworkers in May of 2012 (a date after Hessler's last day working at the BJN facility). When questioned further about such ridiculing, Dr. Levi explained that Hessler said she saw Paxton, Lopez, and Townsend walking down the hall and were "talking about her," which made Hessler believe that they were "sort of ganging up against her."

D. *Events Within One Year of Hessler's March 2013 DFEH Complaint*

In March 2012, Hessler requested time off for a vacation. According to Hessler, the County was supposed to grant her first or second choice for vacation dates, but Lopez selected Hessler's third choice. When Hessler requested help from Townsend on this matter, Townsend walked away without saying anything.

On April 5, 2012, the County informed Hessler that an "interactive process meeting" would take place on April 16, 2012. The purpose of the meeting was to exchange information with Hessler to ensure that she is reasonably accommodated.

Three days before the meeting, Dr. Levi submitted a letter to the County stating that Hessler "needs to stay at the same assignment (location, admissions department and chart clearance) not to cause additional emotional or physical stress." Dr. Levi added that Hessler "has a right to work in a harassment-free and hostility-free environment, which has been difficult to attain in your organization to

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[5] Dr. Levi's testimony regarding Hessler's descriptions of events at BJN were admitted for the limited purposes of supporting Dr. Levi's diagnoses, not for the truth of the statements.

my knowledge." The letter did not indicate that Hessler should work only a particular shift.

The interactive process meeting took place on April 16, 2012. Hessler attended with Townsend and two other County representatives. Hessler informed them that she cannot respond to emergencies to perform cardiopulmonary resuscitation due to her inability to kneel. The County representatives informed Hessler that she would "be temporarily accommodated to [the] day shift from 6:30 a.m. to 2:30 p.m., where there are more staff in which [she] most likely would not be the only staff member left in the medical unit to respond to an emergency situation." The shift change would take effect on May 1, 2012. They also asked Hessler to obtain clarification from her primary care physician and Dr. Levi as to the work restrictions. (Hessler did not authorize the County to speak directly with her physicians or Dr. Levi.) Regarding Hessler's complaints about harassment, the County representatives encouraged her "to complete the County Policy of Equity Report/Notification form."

The next day, Dr. Levi sent a letter to the County stating that "any change in [Hessler's] current assignment would be contraindicated for her health. Due to her medication and her symptoms, she cannot be moved from her current evening shift to the morning hours or the night shift. Reiterating, other restrictions also involve not moving [Hessler] to another location or department."

On April 20, 2012, the County requested further clarification from Dr. Levi. On April 25, 2012, Dr. Levi responded, stating that Hessler "cannot be moved from her current evening shift to the morning hours or the night shift, and cannot be moved to a different location or department."

On April 30, 2012, the day before Hessler's shift change was to go into effect, the County informed her that she "will remain working [her] current shift while [the return to work] office continues to work with the area to identify an appropriate accommodation based on the

clarified medical certificates issued by [Hessler's primary care physician] and Dr. Levi."

Hessler did not return to work after April 30, 2012. Between May 1, 2012, and October 29, 2013, the County periodically received medical certificates from Hessler's physicians and letters from Dr. Levi extending her medical leave of absence through, at least, February 28, 2014. The County wrote letters to Hessler in November 2012, March 2013, and December 2013 acknowledging her physicians' extensions of her medical leave of absence, and inviting her to schedule an interactive process meeting once she has been released to return to work. Our record does not indicate whether Hessler responded to this invitations.

Meanwhile, on July 19, 2012, Hessler and the County settled Hessler's pending worker's compensation claims. In the knee injury case, the parties stipulated that Hessler suffered an injury to "both knees and psych" on September 18, 2008, resulting in temporary and permanent disability. Hessler was awarded monetary compensation and other relief.

In October 2012, Hessler filed her third worker's compensation claim. She alleged a cumulative injury that began on July 1, 2009 and ended on April 30, 2012, which involved injury to "her abdomen, right hip, bilateral knees, circulatory and nervous systems." The injury was allegedly caused by "performing her usual and customary duties at work." In May 2014, the County stipulated that the alleged injury to Hessler's psyche arose out of and during the course of her employment with the County.

At the time of trial in December 2014, Hessler continued to be a County employee on leave of absence. She had never been fired or demoted.

E. *Procedural History*

On March 1, 2013, Hessler filed her second complaint with the DFEH. She alleged that on or before April 16, 2012 (the day of the interactive process meeting), she experienced discrimination, harassment, and retaliation because of her "[n]ational [o]rigin—[i]ncluding language use restrictions, [r]ace." As a result, she was "[d]enied a work environment free of discrimination and/or retaliation [and] [d]enied reasonable accommodation." Hessler requested an immediate right to sue letter, which the DFEH issued the same day.

On April 12, 2013, Hessler filed the complaint in the present case against the County and Paxton alleging five causes of action: (1) disability discrimination; (2) failure to reasonably accommodate disability; (3) national origin / religion discrimination; (4) harassment/hostile work environment; and (5) negligent infliction of emotional distress. The case proceeded to trial on only the first, second, and fourth causes of action.

The jury made special verdict findings supporting Hessler's causes of action for hostile environment harassment and discrimination based on disability, but did not indicate when the harassment and discrimination occurred. They found that Hessler's March 2013 DFEH complaint was "filed timely." The jury rejected Hessler's claims that the County failed to provide reasonable accommodation for Hessler's disabilities or that it failed to participate in a timely, good faith interactive process to determine whether reasonable accommodation could be made. The jury awarded Hessler $128,100 in past lost earnings, $15,820 in other past economic losses, and $10,000 in past noneconomic losses. The court entered the judgment on February 9, 2015.

The court thereafter awarded Hessler attorneys' fees in the amount of $1,282,810, and denied the County's motion to offset the judgment with a worker's compensation award.

On April 1, 2015, the appellants appealed from: (1) the judgment, (2) the order granting Hessler's motion for attorneys' fees; (3) the order denying the County's motion to tax costs; and (4) the order denying the County's motion for offset.

DISCUSSION

I. *Timeliness of the Appeal*

Hessler contends that the appeal from the judgment should be dismissed because the notice of appeal was not timely filed. She argues that she served a "Notice of Entry of Judgment following Special Verdict" on December 23, 2014, and that the 60-day period for filing the notice of appeal began at that time. If she is correct, the appellants were required to appeal no later than February 21, 2015, and their April 1, 2015, notice of appeal is untimely. (Cal. Rules of Court, rule 8.104(a)(1)(B).)

Hessler cites to a document that was originally titled, "[PROPOSED] JUDGMENT ON SPECIAL VERDICT." At some point, the word "PROPOSED" was crossed-out. The document bears two stamps on the caption page. One says: "Received" and "Filing Window," and is dated December 23, 2014. The other is stamped: "FILED," includes a superior court official's signature, and is dated February 9, 2015. On the last page, Judge Linfield signed the document next to the date, February 9, 2015. Attached to the document is a signed proof of service of "JUDGMENT ON SPECIAL VERDICT," dated December 23, 2014, addressed to counsel for the County.

Hessler contends that the County and Paxton were served with the document on December 23, 2014, as evidenced by the proof of service, and that the time to appeal commenced on that date. We disagree. The court stamps, proof of service, and Judge Linfield's dated signature permit only one reasonable conclusion: The unsigned, "PROPOSED" judgment was served on counsel for the County and Paxton on December 23, 2014, and "[r]eceived" at the court's filing

window the same day; Judge Linfield signed the document on February 9, 2015 and crossed out the word "PROPOSED"; and, as evidenced by the "FILED" stamp, the superior court clerk filed the judgment that day while leaving the December 23, 2014 proof of service attached. Because the time to appeal begins to run when the judgment is entered or notice of its entry is served—not when an unsigned, *proposed* judgment is served—the time to appeal commenced on February 9, 2015. (Cal. Rules of Court, rule 8.104(a)(1)(B).) The County and Paxton's notice of appeal, filed 51 days later, was timely.

II. *The FEHA's Statute Of Limitations And The Sufficiency Of The Evidence*

Hessler prevailed on two causes of action: discrimination based on disability and hostile environment harassment based on her disability. The County and Paxton contend that they are entitled to judgment in their favor because there is insufficient evidence of any unlawful discrimination or harassment within the one-year period preceding the date Hessler filed her DFEH complaint on March 1, 2013. We agree.

The FEHA prohibits employers from harassing or discriminating against employees based on a physical or mental disability. (Gov. Code, § 12940, subds. (a) & (j)(1).) Employers have an affirmative duty to take "all reasonable steps necessary to prevent discrimination and harassment from occurring." (Gov. Code, § 12940, subd. (k).) If an employee with a disability or medical condition requests an accommodation, the employer also has a duty to "engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any." (Gov. Code, § 12940, subd. (n).)

Harassment can be verbal—such as epithets or derogatory comments—or physical, such as assault and physical interference with work. (Cal. Code Regs., tit. 2, § 11019.) In order to be actionable, the harassment must be so severe or pervasive that it effectively altered the

conditions of the victim's employment and created an abusive working environment. (*Muller v. Automobile Club of So. California* (1998) 61 Cal.App.4th 431, 446; *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 609.) "[A]n employee generally cannot recover for harassment that is occasional, isolated, sporadic, or trivial; rather, the employee must show a concerted pattern of harassment of a repeated, routine, or a generalized nature." (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 283.)

A plaintiff asserting a cause of action arising under the FEHA must first file a timely complaint with the DFEH and obtain the agency's permission to file a civil action in court. (*Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 492; *Rojo v. Kliger* (1990) 52 Cal.3d 65, 83.) To be timely, the administrative complaint must generally be filed within "one year from the date upon which the alleged unlawful practice or refusal to cooperate occurred." (Gov. Code, § 12960, subd. (d).) An "unlawful practice" may occur as a discrete incident, such as a discriminatory termination of employment or failure to hire. (See, e.g., *Romano v. Rockwell Internat., Inc.*, *supra*, at p. 495; *Williams v. City of Belvedere* (1999) 72 Cal.App.4th 84, 92.) It may also consist of a course of conduct over a period of time. (See, e.g., *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1059.)

The FEHA statute of limitations ordinarily bars recovery for acts occurring more than one year before the filing of the DFEH complaint. (*Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1402.) When, however, an unlawful course of conduct begins outside the limitations period and continues to a date within the limitations period, "the continuing violation doctrine comes into play." (*Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 812 (*Richards*).) Under this doctrine, an employer can be liable for the conduct outside the limitations period "if the employer's unlawful actions are: (1) sufficiently similar in kind . . . ; (2) have occurred with reasonable frequency; (3) and have not acquired a degree of permanence." (*Richards*, *supra*, 26 Cal.4th

at p. 823) The "plaintiff has the burden of proof to show his or her claims are timely under the continuing violation doctrine." (*Jumaane v. City of Los Angeles*, *supra*, 241 Cal.App.4th at p. 1402.)[6]

The continuing violations doctrine does not apply if the defendant did not commit an act of unlawful discrimination or harassment within the limitations period. (*Trovato v. Beckman Coulter, Inc.* (2011) 192 Cal.App.4th 319, 326-327; *Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 879; *Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, 64.) Thus, if a plaintiff fails to establish any acts of unlawful discrimination or harassment that occurred within the one-year period preceding the filing of the DFEH complaint, the continuing violations doctrine does not come into play and the plaintiff cannot recover damages based upon actions occurring outside the limitations period.

In evaluating whether the evidence is sufficient to support a jury's factual findings, we review the entire record to determine "whether there is *any* substantial evidence to support them." (*Leff v. Gunter* (1983) 33 Cal.3d 508, 518.) Substantial evidence is evidence that is "reasonable in nature, credible, and of solid value." (*Estate of Teed* (1952) 112 Cal.App.2d 638, 644.) In making this determination, we do not weigh the evidence, consider the credibility of the witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom. (*Leff*, *supra*, 33 Cal.3d at p. 518.)

Initially, we observe that there is no evidence of harassment or discrimination against Hessler after she stopped working at BJN at the

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[6] In this case, over the County's objection, the court instructed the jury on the burden of proof regarding the continuing violations doctrine as follows: "The burden is on [d]efendant County of Los Angeles to prove that the March 1, 2013 [DFEH] complaint was not filed timely." As defendants contend and Hessler concedes, that instruction was erroneous. (See *Jumaane v. City of Los Angeles*, *supra*, 241 Cal.App.4th at p. 1402.)

end of April 2012. She remained at all times thereafter a County employee on a medical leave of absence, and has not been terminated or demoted. During that time, there appears to have been no contact between the parties other than the County's periodic invitations to Hessler to engage in an interactive process and letters from Dr. Levi and Hessler's physicians authorizing extensions of her leave of absence. Because the one-year limitations period began on March 1, 2012, and Hessler stopped going to work after April 30, 2012, Hessler's FEHA claims depend upon the existence of evidence of unlawful discrimination or harassment occurring between March 1 and April 30, 2012.

We can quickly dispose of any FEHA claim as to Paxton. Paxton began a medical leave of absence in December 2011, several months before the beginning of the limitations period. She did not thereafter work at BJN while Hessler was at the facility and there is no evidence that she had any further contact of any kind with Hessler. Because there is no evidence that Paxton committed any unlawful act toward Hessler during the one-year limitations period, Hessler's FEHA claims against her are barred. (Gov. Code, § 12960, subd. (d).)

The lack of contact between Hessler and Paxton during the one-year limitations period also bears upon Hessler's claims against the County. If Paxton was not harassing or discriminating against Hessler during that time, the County could not have vicariously harassed or discriminated against Hessler based on Paxton's conduct during that time. The same is true for any alleged harassment based upon Meraz, who had been transferred from BJN in 2009 to accommodate Hessler and thereafter had no contact with Hessler.

In response to the County's argument that the "only events that took place within the statutory period involved the County's efforts to return [Hessler] to work and accommodate her disability," Hessler argues that "a substantial amount of evidence was received on [Hessler's] behalf at trial," and that "[t]his case was not a close call on the issues of harassment and disability discrimination." She does not,

however, refer us to evidence of a single instance of harassing or discriminating conduct within the limitations period. When, as here, the plaintiff "can identify no act of . . . harassment occurring within the year preceding his [or her] DFEH complaint, his [or her] hostile working environment claim is necessarily barred by the statute of limitations." (*Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 879-880.)

Hessler also argues that "[t]he jury unanimously found that Paxton harassed Hessler because of her disability, nine jurors found the County harassed Hessler because of her disability, and the jury was again unanimous in finding that . . . Hessler's disability was a substantial motivating reason for adverse employment actions committed by County." The fact that the jury made these findings, however, merely raises the question whether there was substantial evidence to support the findings, it does nothing to resolve it.

Although Hessler's brief is not helpful, our review of the record disclosed five possible events that occurred within the limitations period that warrant discussion. First, Hessler's DFEH complaint specifies April 16, 2012, as the last date she experienced a discriminatory or harassing act, suggesting that an unlawful act occurred at the interactive process meeting held on that date. The only arguably wrongful act arising from that meeting that we can discern from our record was the County's announcement that Hessler would move to the morning shift. Although the County stated that the change was intended to accommodate Hessler's concern about responding to emergencies, Hessler testified that she felt she was being "punished."

The shift change was to take effect on May 1, 2012—two weeks after the interactive process meeting. In response to the impending change, Dr. Levi informed the County that Hessler "cannot be moved from her current evening shift to the morning hours or the night shift." The County then informed Hessler on April 30, 2012 (before the shift change went into effect), that she would keep her "current shift"

while the County continued to work "to identify an appropriate accommodation" based on statements from Dr. Levi and Hessler's primary care physician. The County, in short, abided by Dr. Levi's direction not to change Hessler's shift while it searched for a way to accommodate Hessler's physical and psychological work restrictions. When viewed in their context, the events and statements surrounding the interactive process meeting cannot reasonably be understood as harassing or discriminatory.

Second, Hessler refers to Meraz's return to BJN in July 2012 and suggests that this made Hessler "feel threatened." Meraz did not return to BJN, however, until more than two months after Hessler had stopped coming to work. The County had no duty to keep Meraz away from BJN when Hessler was not at the facility and provided no indication of when, if ever, she planned to return. Moreover, there is no evidence that the County had decided that Meraz would remain at the facility if Hessler returned, and Hessler's suggestion that it would is speculation, not substantial evidence.

Third, when Dr. Levi was questioned as to when Hessler had been harassed or discriminated against, she identified one incident that ostensibly took place within the one-year FEHA filing period. Dr. Levi said that Hessler had been "ridiculed" in May 2012 by Paxton, Lopez, and Townsend when they were walking down the hall and "talking about her." There are two problems with this evidence. First, the incident could not have happened in May 2012 because Hessler had stopped going to work after April 30, 2012. Second, Dr. Levi's statements were based on what Hessler told her and, as the court instructed the jury, could not be used for the truth of the statements. Dr. Levi's statements, therefore, do not constitute substantial evidence of the alleged ridicule.

Fourth, Hessler testified that in March 2011, Lopez gave Hessler her third choice of vacation dates, when Hessler was entitled to her first or second choice. When Hessler then asked Townsend to help

"fix" her vacation, Townsend walked away and did nothing. Even drawing all inferences from this incident favorable to Hessler, as we must, it does not constitute substantial evidence of harassment or discrimination by the County against Hessler based upon or because of her disabilities.

Finally, Hessler states in her brief that she "personally told Lopez in 2012 about her work restrictions, but Lopez responded by calling Hessler a liar." She cites to the record where the following colloquy between Hessler and her trial counsel appears.

"[Plaintiff's counsel:] Do you know if Ms. Lopez was informed that the [County] stipulated to your injuries in 2012?

"[Hessler:] Yes, because I told her, you know, I have restrictions and I keep on asking and it was not—no field [*sic*], you know, for what I needed.

"[¶] . . . [¶]

"[Plaintiff's counsel:] Did she ever tell you anything about her belief surrounding your restrictions?

"[Hessler:] Yes.

"[Plaintiff's counsel:] What did she tell you?

"[Hessler:] I was a liar."

The testimony is not substantial evidence that Lopez called Hessler a liar within the one-year period that began in March 2012. Although the conversation Hessler describes between herself and Lopez regarding work restrictions and Lopez's response had to have taken place while Hessler was working at BJN, the referenced 2012 stipulation did not occur until July 2012, more than two months after Hessler stopped going to work and after the last date (April 16, 2012) that Hessler claimed she had experienced any discrimination or harassment. The 2012 stipulation, therefore, does not provide a reference point for determining when Lopez called Hessler a liar, and the reference to it in the cited colloquy does not support the assertion that Hessler made the comment in March or April 2012.

Because there is no substantial evidence that appellants committed any act of unlawful harassment or discrimination based upon Hessler's disabilities within the one-year period preceding Hessler's 2013 DFEH complaint, the continuing violation doctrine does not come into play and any claim based upon actions that occurred prior to that time are barred by the FEHA's statute of limitations. We therefore reverse the judgment. Because the judgment is reversed, the award of attorneys' fees is also reversed, and the order denying the motion for offset is moot.[7]

DISPOSITION

The judgment, the order awarding attorneys' fees, and the order denying appellants' motion to tax costs are reversed. The motion to offset is moot. Upon remand, the court shall enter judgment for the County and Paxton.

The County and Paxton are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.

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[7] Because we reverse the judgment because it was unsupported by substantial evidence, we do not address appellants' additional arguments.