

# REPLACEMENT

**FILED**

January 25, 2026

IMAGE ID N260260ZCNSC, FILING ID 0000043546

**CLERK**

**NEBRASKA SUPREME COURT  
COURT OF APPEALS**

**Case No. A-25-477**

**IN THE NEBRASKA COURT OF APPEALS**

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**REYMITA WALLS**

**VS.**

**METROPOLITAN UTILITIES DISTRICT OF OMAHA,**

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**APPEAL FROM THE DISTRICT COURT OF  
DOUGLAS COUNTY, NEBRASKA**

**Honorable Tressa Alioth, District Court Judge**

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**Reply Brief of Appellant**

**REYMITA WALLS**

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## ARGUMENT

### **I. THE APPELLEE'S POSITION THAT APPELLANT'S INABILITY TO IDENTIFY THE EVIDENCE THE COURT DISREGARDED IGNORES THE REQUIREMENT THAT THE COURT DETERMINE WHETHER THERE IS ANY EVIDENCE THAT WOULD CREATE A DISPUTE AS TO MATERIAL FACT THAT THE APPELLEE IS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.**

At the time of hearing on the motion for summary judgment the defendant objected to the evidence offered by Walls stating:

"I have some objections to Exhibit F. I haven't seen the document. It wasn't in any of the matters that were provided to us. And then also there's portion of that exhibit – pages—I am sorry—I haven't seen them. They weren't provided. I do know what they are because we have the same file and portions of it are hearsay evidence—copies of interview notes between MUD's HR Department and Reymita Walls and Patty Cannon, so I would object to those portions on hearsay grounds." (6:14-24)

It should be noted the offered evidence was a true copy of the excerpts of documents provided by *MUD* in response to Requests for Production provided by *MUD 1396-1416 at p. 1-21* attached to an affidavit of Plaintiff's Counsel. (T72)

The Court in ruling on the motion for summary judgment stated: Defendant objected on hearsay grounds to Exhibit 7 and the Court took that objection under advisement. The Court now overrules MUD's objections and receives Exhibit 7, except that the Court will disregard any portions of Exhibit 7 that fail to comply with the applicable rules of evidence. (T107)

The Court does not indicate what evidence she was disregarding. The Appellee objected only on hearsay to a small portion of the evidence, which was MUD's produced documents as part of discovery.

The case law cited by MUD actually supports our position. In this case, MUD objected to a small portion of Exhibit 7F, offered on the basis of hearsay. The court without articulating what portions of the evidence she was referring to, nor indication on what basis, indicated that 'the Court will disregard any portions of exhibit 7 that fails to comply with the applicable rules of evidence.' MUD did not object to any portions of Exhibit 7, other than Exhibit 7, F and was not precise about the pages objected to. In *Centurion Stone of Neb. v. Whelan*, 286 Neb. 150, 835 N.W.2d 62 (2013), cited by MUD the court clearly identifies that where appellant is not the cause of the deficient record, when it is not the fault of the appellant.

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As a general proposition, it is incumbent upon the appellant to present a record supporting the errors assigned; absent such a record, an appellate court will affirm the lower court's decision regarding those errors. We have applied this rule against appellants in situations where the appellant has failed to properly create or request the record before the trial court by simply examining whether the pleadings supported the trial court's judgment.

But the rule is different where the fault for the lack of an appellate record cannot be assigned to the parties. In *Terry v. Duff*, the court was unable to locate the bill of exceptions. Though it was unclear whether the bill had been lost by the clerk of the court or by one or other of the parties, this court vacated the trial court's judgment and remanded the cause for a new trial. And in *State v. Slezak*, the lack of a bill of exceptions was attributed to the court reporter. We remanded the cause to the district court with directions to order the county court to prepare a new bill. And quite recently, in *Hynes v. Good Samaritan Hosp.*, this court vacated a judgment and remanded the cause for a new trial when, through no fault of the parties, none of the testimony presented by the defendant was preserved for appellate review.

*Centurion Stone of Neb. v. Whelan*, 286 Neb. 150, 835 N.W.2d 62 (2013)

It is unclear what the court may or may not have disregarded, and to the extent that the court disregarded any part of the evidence offered by the Appellant, such was in error.

The other case cited by MUD is also supportive. *Hynes v. Good Samaritan Hosp.*, 285 Neb. 985, 830 N.W.2d 499 (2013) the court considered a case where a portion of the testimony was lost. The Court said:

When a record is deficient through no fault of the appellant, the general rule does not apply. Instead, we will remand for a new trial if the deficiency in the record prevents us from providing the appellant meaningful appellate review of the assignments of error. Generally, meaningful appellate review requires a record that elucidates the factors contributing to the lower court's decision. Here, the incompleteness of the record clearly prevents us from conducting a meaningful appellate review. All of the testimony from Good Samaritan's witnesses is unavailable. Although the standard of review in a workers' compensation case is quite limited, it requires us, at a minimum, to examine whether there is "sufficient competent evidence in the record" to warrant the award appealed from. 8 And to determine whether there is "sufficient competent evidence," we necessarily have to review all of the evidence presented at trial. Indeed, our court rules require the production of the complete bill of exceptions in such a situation. Specifically, "[i]f the appellant intends to urge on appeal that a finding or conclusion is unsupported by the

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evidence or is contrary to the evidence, the bill of exceptions must include all evidence relevant to the finding or conclusion.”

*Hynes v. Good Samaritan Hosp.*, 285 Neb. 985, 830 N.W.2d 499 (2013)

The summary judgment statutes provide that in responding to a motion for summary judgment the opposing party may rely on particular parts of materials in the record including deposition, answers to interrogatories, admissions, stipulations, affidavits or other materials. *Neb. Rev. Stat. §25-1332 (2)(a)* It is common to rely on documents provided through requests for production. It is Appellant’s contention all evidence was properly considered and not subject to being disregarded. If the court refused to consider any part of the evidence offered by the Appellant this is error. It is also contended that the court needed to articulate what evidence, if any was being disregarded.

## CROSS APPEAL

### **I. MUD’S CONTENTION THAT THE COURT ERRED IN FAILING TO FIND WALLS WAS NOT QUALIFIED TO PERFORM THE JOB, EXPOSES THE FACT THAT WALLS MET HER PRIMA FACIE CASE, AND THE MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED.**

Appellee’s for the first time at the motion for summary judgment claimed Walls was not qualified for the position of Supervisor quality assurance and training. Appellee’s had admitted in their answer that she was qualified for the position, instead claiming that she was not the best qualified applicant. (T6-18 ¶12) Walls would refer the court to our opening brief for arguments and factual assertions which demonstrate Walls was qualified to perform the Supervisor of Quality Assurance and Training. There is ample evidence to support her position. The bigger issue and even the argument that MUD makes exposes the true error of the Court in granting summary judgment.

In ruling on the motion for summary judgment the Court states, “Assuming without deciding that Plaintiff’s evidence is sufficient to meet the prima facie burden of demonstrating that she was a qualified applicant, the Court turns to Defendant’s evidence that their actions were taken for nondiscriminatory reasons.” (T115-116) The Court therefore found that the prima facie case was made and MUD was required to produce evidence of a legitimate non discriminatory reason that they relied on for the decision. The Court wrongly decided that the plaintiff has to demonstrate that the nondiscriminatory reason was pretextual, stating “The burden now shifts to Plaintiff to demonstrate that the nondiscriminatory reasons provided by Defendant are pretextual.” (T118) The

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burden at this stage of the proceedings is merely to show some reason that the reason given is not the true reason for the decision, thereby creating an inference that the true reason is discrimination.

In a motion for summary judgment the non-moving party is entitled to all inferences. See Appellant's opening brief §III.

The court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence. *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554-555, 108 L. Ed. 2d 504, 110 S. Ct. 1331 (1990); *Liberty Lobby, Inc.*, supra, at 254; *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 696, n. 6, 8 L. Ed. 2d 777, 82 S. Ct. 1404 (1962). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Liberty Lobby*, supra, at 255. *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150-151 (U.S. 2000)

## **II. MUD'S CONTENTION THAT THE COURT ERRED IN FAILING TO FIND THE CHANGE TO WALLS' JOB DESCRIPTION WAS NOT A DEMOTION, EXPOSES THE FACT THAT WALLS MET HER A FACIE CASE, AND THE MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED.**

First of all, it is difficult at best to argue the change from Supervisor Quality Assurance, to Sr Quality Assurance Specialist, and a corresponding recategorizing the position from a SP 4 to an SP 3 position is not a demotion. What MUD has argued all along is that the fact that despite the title Change and the lowering of the category of the position, the fact that they nevertheless continued to pay Walls her same salary, protects them from liability. It is clearly a demotion.

Recent United States Supreme Court case law shows that a change to a job, even without a corresponding wage change can lead to liability. In the case of *Muldrow v. City of St. Louis*, 601 U.S. 346, 144 S. Ct. 967 (2024). In *Muldrow* a female officer was transferred from an undercover position to a job elsewhere in the Department. While the officer's rank and pay remained the same in the new position, her responsibilities, perks, and schedule did not. In reversing the Eighth Circuit's upholding of the district court's order granting summary judgment the Supreme Court States:

What the transferee does not have to show is that the harm incurred was "significant" or otherwise exceeded some heightened bar. "Discriminate against" means treat worse, here based on sex. See, e.g., *Bostock*, 590 U. S., at 657, 140 S. Ct. 1731, 207 L. Ed. 2d 218. Neither that phrase nor any other establishes an elevated threshold of harm. To demand "significance" is to add words to the statute Congress enacted. It is to impose a new requirement on

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a Title VII claimant, so that the law as applied demands something more than the law as written.

*Muldrow v. City of St. Louis*, 601 U.S. 346, 144 S. Ct. 967 (2024)

Again, on the issue of the demotion, the court states “Assuming without deciding that Plaintiff’s change in job title was a demotion, the Court finds that Defendant has demonstrated a legitimate, nondiscriminatory reason for the restructuring. Plaintiff has failed to create a genuine issue of material fact as to pretext.” Once again, the court failed to provide the correct analysis, by drawing all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence. *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554-555, 108 L. Ed. 2d 504, 110 S. Ct. 1331 (1990)

## CONCLUSION

The trial court erred in not clearly articulating what if any evidence the court was disregarding when ruling on the motion for summary judgment. All evidence submitted by the Appellant should have been fairly considered. The trial court erred in finding there was no genuine issue of material fact that could lead a fact finder to determine that Appellant was discriminated against on the basis of her race, gender and/or her age. The trial court erred in not viewing the facts in the light of the non-moving party. The trial court erred in finding there was no genuine issue of material fact from which a fact finder could find that the Appellee’s articulated reason for promoting the younger, white, male was a pretext to hide the discriminatory motive.

The answer of the Appellee admitted that the Appellant was a black Latina female substantially older than the candidate who was awarded the position and that she was qualified for the supervisor of quality assurance and training, thereby admitting to the prima facie case. The proffered reason, that they believed that she lacked experience in training individuals is disputed, especially in light of the fact that the younger, white, male applicant lacked experience in training within the Appellee workplace, and also lacked quality assurance experience. In addition, the changing of the Appellants job title and demoting her position to a lower pay grade was also discriminatory in and of itself.

Dated January 25, 2026

Respectfully submitted,

REYMITA WALLS, Plaintiff/ Appellant

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## CERTIFICATE OF COMPLIANCE

Pursuant to Neb. Ct. R. App. P. 2-103(C)(4), I hereby certify that this Brief complies with the typeface requirements, being Century Schoolbook font, 12 point type. The document was prepared using Microsoft 365 Word and, relying on the word processor word count feature, contains 2,547 words.

Dated this 25th day of January, 2026.

By: s/Joy Shiffermiller

Joy Shiffermiller

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## Certificate of Service

I hereby certify that on Sunday, January 25, 2026 I provided a true and correct copy of this *Reply Brief-Replacement* to the following:

Metropolitan Utilities District represented by A Justin Cooper (16814) service method: Electronic Service to **justin\_cooper@mudnebr.com**

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