

FILED

10/09/2026

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 17, 2026 Session

SUSAN ZEILER v. THE CORPORATE IMAGE, INC.

Appeal from the Chancery Court for Sullivan County
No. 23-CB-28447 (S) Steven Curtis Rose, Judge

No. E2025-01624-COA-R3-CV

The plaintiff-appellant sued the defendant-appellee alleging that the defendant engaged in pregnancy discrimination when it terminated the plaintiff's full-time employment. The trial court granted summary judgment in favor of the defendant, finding that the plaintiff did not rebut the defendant's proffered legitimate, nondiscriminatory reasons for its decision. We conclude that the plaintiff demonstrated the existence of specific facts in the record that could lead a rational trier of fact to find in her favor regarding whether the defendant's proffered reasons for her termination were pretextual. Accordingly, we reverse the trial court's grant of summary judgment in the defendant's favor.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed;
Case Remanded**

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY, P.J., E.S., and WILLIAM E. PHILLIPS II, J., joined.

Mathew R. Zenner, Brentwood, Tennessee, for the appellant, Susan Zeiler.

David S. Bunn, Fairfax Station, Virginia; and Will A. Ellis, Kingsport, Tennessee, for the appellee, The Corporate Image, Inc.

OPINION

BACKGROUND

Susan Zeiler began working for The Corporate Image, Inc. ("TCI") on January 4, 2016, as a Senior Project Manager in the company's Corporate Marketing division. She was supervised by TCI's Vice President, Robbie Phillips. When Ms. Zeiler was hired, the only other Corporate Marketing employee was Project Manager Mary Herrera, who had

transitioned from full time to part time after the birth of her second child. Christine Riser was hired in early 2017 to handle digital-marketing functions and also worked with the Corporate Marketing division. In late March 2017, Ms. Zeiler received positive feedback on her job performance from Mr. Phillips and TCI's President, Jon Lundberg, and was given a ten percent pay raise. On May 12, 2017, Ms. Zeiler informed Mr. Lundberg that she was pregnant with her second child. Between approximately late June 2017 and late July 2017, Mr. Lundberg initiated two conversations with her about whether she intended to return from maternity leave on a full-time or part-time basis. The parties agree that on each occasion, she stated that she planned to return on a full-time basis. Ms. Zeiler contends that during the second conversation, Mr. Lundberg said something to the effect of "best laid plans can change. I understand [] how that changes with a second child." Ms. Zeiler also alleges that Mr. Lundberg knew that she intended to take a minimum of eight weeks of maternity leave, two of which would be paid leave pursuant to a TCI policy.

On July 26, 2017, while Ms. Zeiler was on vacation, Tidelands Health ("Tidelands") notified TCI that it was terminating its marketing contract with TCI effective September 30, 2017. According to TCI, Tidelands was Ms. Zeiler's "main client . . . and the largest portion of her work and salary[.]" She learned of the lost account when she returned to work on July 31 and continued performing her duties; however, during a regularly scheduled meeting on August 2, 2017, Mr. Lundberg told her that he was "going to have to let [her] go at the end of the month." Ms. Zeiler avers that during this meeting, Mr. Lundberg referenced her upcoming maternity leave and stated that she would "be gone for a while anyway." Mr. Lundberg denies referencing her upcoming maternity leave during this conversation. Ms. Zeiler contends that TCI chose to terminate her, and not another employee, because she was pregnant and would soon be taking maternity leave. TCI denies this and alleges that there was "insufficient work available to keep her employed full time."

On August 8, 2017, Ms. Zeiler learned that Ms. Riser was to be made the Vice President of TCI's Corporate Marketing division and would be over Corporate Marketing and digital marketing. According to Ms. Zeiler, she saw her obstetrician the following day, August 9, "due to the anxiety and stress the loss of her job was causing" and was provided "a note releasing her from work until further notice due to complications of pregnancy, that she could use if needed." Specifically, the note states: "Please release pt [*sic*] from work until further notice due to complications of pregnancy[.]" However, Ms. Zeiler avers that she "was completely capable of continuing to work, and the note was given to her merely as a precaution to use should the need arise."

On August 14, 2017, Ms. Zeiler met with Mr. Lundberg, Mr. Phillips, and TCI's office manager, Donna Stinson, to discuss insurance and leave issues. At that meeting, they informed her that her separation date would be moved from August 31 to August 25. After being told that she might not be permitted to use her accrued paid sick leave, Ms. Zeiler presented Ms. Stinson with the August 9 doctor's note and left for lunch. She concedes that she did so "as a way to take her sick days before her last day." After Ms.

Zeiler returned from lunch on August 14, Ms. Stinson notified her that she could not continue to work due to the restrictions in the doctor's note and that TCI would pay her for the remainder of the workday, for the rest of the week as paid sick days, and for her five accrued paid vacation days. Ms. Stinson prepared a separation notice indicating that Ms. Zeiler was being permanently laid off, effective August 18, 2017, due to lack of work and provided it to Ms. Zeiler before she left for the day. The notice also stated, in relevant part: "Released reason is from lack of work. However, doctor released patient from work until further notice due to complications of pregnancy."

After leaving the office on August 14, Ms. Zeiler emailed thirty-one of TCI's clients and vendors, including newspaper and news station representatives, from her TCI email address. In relevant part, her email stated:

Good afternoon. I wanted to personally let you know that due to loss of business I have been let go from Corporate Marketing.

For future needs, you can reach out to Mary Herrera or Christine Riser directly.

TCI has extended an offer for me to return part-time in the future should business return, however not immediately so I will be in the job market. I am pregnant with my second child, due in October, so I will be looking immediately, and then looking to jump back in after the first of the year. Please keep in touch. . . .

She also included her personal email address and cell phone number. Ms. Zeiler contends that this email was factually accurate. However, she did not send this email to anyone at TCI, and she deleted the email from her sent mail folder. TCI first learned of the email from one of its clients and disputes the accuracy of the email because it fails to mention the doctor's note stating that Ms. Zeiler should be released from work until further notice. On August 16, Ms. Stinson notified Ms. Zeiler by phone that TCI viewed the email as a violation of her nondisclosure agreement¹ because it disclosed information TCI considered damaging. Ms. Stinson further told Ms. Zeiler that TCI was treating her separation as a discharge instead of a lay off and that it would not be honoring her sick days, though it would still pay her for her accrued vacation days. As a result, Ms. Stinson mailed Ms. Zeiler a revised separation notice indicating that she was permanently discharged on August 14, 2017.

¹ Ms. Zeiler signed a nondisclosure agreement on January 4, 2016, whereby she agreed "not to disclose information which may in any way be damaging to The Corporate Image, Corporate Marketing Group or any individuals associated."

Ms. Zeiler initially sued TCI and Mr. Lundberg in the Circuit Court for Sullivan County (the “Circuit Court”) on August 1, 2018. Her complaint alleged violations of the Tennessee Human Rights Act, Tennessee Disability Act, Tennessee Public Protection Act and asserted claims of sex discrimination, pregnancy discrimination, disability discrimination, retaliatory discharge, and “outrageous conduct/intentional infliction of emotional distress.” On October 29, 2018, an agreed order was entered dismissing all her claims against Mr. Lundberg and dismissing her claims against TCI for violation of the Tennessee Public Protection Act and “outrageous conduct/intentional infliction of emotional distress.”

On August 16, 2019, TCI filed a motion for summary judgment. After briefing and argument, the Circuit Court entered an order on December 2, 2019, granting TCI summary judgment on Ms. Zeiler’s retaliation claim; however, it denied TCI summary judgment on her pregnancy discrimination claim, finding that genuine issues of material facts exist as to “whether there is a nexus between [Ms. Zeiler’s] pregnancy and her termination[,]” “whether temporal proximity satisfies the nexus[,]” and whether TCI’s “proffered non-discriminatory reasons for termination are pretextual.” Ms. Zeiler later voluntarily dismissed the remainder of the Circuit Court action without prejudice.

She refiled her pregnancy discrimination claim against TCI in the Chancery Court for Sullivan County (the “trial court”) on December 21, 2023. TCI answered the complaint, denied that it terminated Ms. Zeiler because she was pregnant, and asserted counterclaims against her for tortious interference with business relationships and breach of her nondisclosure agreement. On August 26, 2024, TCI filed a motion for summary judgment as to Ms. Zeiler’s pregnancy discrimination claim and its counterclaim for breach. TCI argued that it is entitled to summary judgment because (1) Ms. Zeiler’s proof in support of her claim is insufficient to establish a *prima facie* case of discrimination and (2) TCI had legitimate, nondiscriminatory business reasons for its employment decisions, namely, she was moved from full time to part time due to a loss of business, and she was ultimately terminated for violating her nondisclosure agreement. Attached to TCI’s motion was an affidavit of Ms. Stinson stating, in relevant part:

6. Ms. Zeiler was advised of the loss of Tideland Health as a client following her return from vacation on Monday, July 31, 2017. I was told by Mr. Lundberg to modify her employment status to part-time, effective September 1, 2017. . . . As Office Manager, I was advised that Ms. Zeiler’s status was to remain “as is” for the time being, but would be changed to part time following the end of August unless the volume of work for her to do increased through some source.

7. . . . Ms. Herrera was already classified as a part-time employee, which basically means that the employee does not work a set schedule but performs work for clients on an as-needed or on a project basis. In Ms.

Zeiler's situation, she could continue to perform work as of September 1st and beyond, depending upon our workload and her interest in working. If the workload picked up to an appropriate level, then a future return to full-time status was certainly possible. . . .

8. As Office Manager, I knew there was no plan for Ms. Zeiler's employment to be terminated as of August 31, 2017. She would, however, no longer be a full-time employee. The planned change in Ms. Zeiler's status was due to lack of business on the Corporate Marketing side of the business, and had nothing to do with the fact that she was pregnant.

9. . . . Simply put, every client for whom Ms. Zeiler had performed significant work in the past was trending in the wrong direction or had been lost. Thus, when the Tidelands Health announcement came . . . , there was no continued justification for Ms. Zeiler to create overhead as a full-time employee on the Corporate Marketing side of the business when Ms. Herrera was part-time. Accordingly, placing Ms. Zeiler on the same footing as Mary Herrera simply made sense. But Ms. Zeiler's status was never changed to part-time because physician's restrictions that she revealed to me on August 14, 2017 required that she be placed on leave immediately while she was still a full-time employee.

* * *

12. . . . A separation notice was provided to Ms. Zeiler. Given the limited choices available on the form, I chose "lack of work" and noted her entitlement to four sick days and five vacation days. I completed the form in the manner that I felt described the situation using the options on the form; my intent was to convey that Ms. Zeiler was being placed on inactive status due to medical reasons, and that she would be unable to work until released by her doctor. The sole factor that led to her being placed on leave at that time was her doctor's note, which clearly said she should be "release[d] . . . from work" immediately. Ms. Zeiler was eligible to resume work later if work was available for her to perform and her doctor cleared her to resume working.

* * *

15. On Wednesday, August 16, 2017, at Mr. Lundberg's direction, I called Ms. Zeiler and left a voice message asking her to return the call. Ms. Zeiler returned the call at approximately 5:50 p.m. and I informed her that she had violated the Non-Disclosure Agreement she had signed. Accordingly, she was fired. A revised separation notice was issued and I also

put together a letter for Mr. Lundberg's signature regarding her conduct and the violation of Company policy. Both were sent to Ms. Zeiler by certified mail. Accordingly, her employment was terminated because she had communicated information that was confidential and did so in a manner that reflected negatively on the Company.

Also attached was an affidavit of Mr. Phillips, which states in relevant part:

5. . . . Ms. Zeiler spoke with me and sought clarification regarding her status. I told her that she would remain a full-time employee through the end of August, and would go "part-time" as of September 1, 2017. She seemed to understand the clarification I provided her. . . .

6. By August 14, 2017, it was clear that there was very little work for Ms. Zeiler to perform for either Tidelands Health or other Corporate Marketing customers. Accordingly, Mr. Lundberg and I decided to move her part-time date up by one week. He and I met with Ms. Zeiler to explain the decision to her, and she seemed to understand the decision. She did not challenge the explanation that was provided her in any way. Later that morning, [she] presented a doctor's order which restricted [her] from performing any work and she was thus placed on inactive status.

Ms. Zeiler responded and argued that TCI's motion should be denied due to collateral estoppel because a similar motion was denied in the first lawsuit and because she met her burden to show a prima facie case of pregnancy discrimination. In support of her prima facie case, Ms. Zeiler argued that comparable nonpregnant employees received more favorable treatment than her, which establishes a nexus between Ms. Zeiler's pregnancy and her termination. Specifically, she argued that TCI treated Ms. Herrera—who was not pregnant, was "technically below [Ms.] Zeiler in the employment hierarchy, and [was] a part time employee"—more favorably than Ms. Zeiler because TCI increased Ms. Herrera's hours. She also argued that Ms. Riser—who also was not pregnant—"was promoted to VP over Corporate Marketing, essentially taking over for [Ms.] Zeiler as head of the Corporate Marketing division." Furthermore, Ms. Zeiler argued that the timing of two conversations in which Mr. Lundberg "questioned her about whether she intended to return from leave and work full time, part time, or not at all" establishes a nexus between her pregnancy and termination. Next, Ms. Zeiler argued that TCI's stated legitimate nondiscriminatory reason for terminating her is pretextual. In response to TCI's statement of undisputed material facts, she disputed that the number of hours she billed, the number of clients she served, and the volume of work from such clients had all declined in the months leading up to her termination. She also disputed that she was told that she would be moved to part time. Instead, she asserted that although Mr. Lundberg "vaguely mentioned the possibility of working part time in the future, there was no offer of a part time job" and that she left the August 2 meeting "with the clear understanding that after August 31, 2017 she would not

have a job[.]” And she asserted that she “was, and remained, completely capable of continuing to work[.]” despite the August 9 doctor’s note.

The trial court heard TCI’s motion for summary judgment on February 11, 2025, and entered an order granting the motion on March 6, 2025. The trial court found, in relevant part, that Ms. Zeiler’s August 14 email was dispositive of the knowledge and intent of the parties. In that email, which Ms. Zeiler asserts was “factually accurate,” Ms. Zeiler states that she was “let go due to loss of business.” Further, the trial court found that:

f. [TCI] provided undisputed and un rebutted evidence that [Ms. Zeiler] was terminated as a result of the August 14, 2017 email which [TCI] determined was sent in violation of the Non-Disclosure Agreement [that Ms. Zeiler] signed.

g. [Ms. Zeiler] did not provide any evidence to refute, rebut or challenge [TCI’s] evidence that [TCI’s] termination of [her] employment was as a result of her August 14, 2017 email violating the Non-Disclosure Agreement she signed and was a legitimate and non-discriminatory business decision.

h. [Ms. Zeiler] did not present any evidence that [she] was discriminated against as a result of her being pregnant as required under case law.

TCI subsequently voluntarily dismissed its pending counterclaims, and the trial court entered a final order on September 19, 2025. Ms. Zeiler appeals to this Court.

ISSUES

In her appellate brief, Ms. Zeiler raised two issues; however, at oral argument, she conceded and abandoned her first issue.² Therefore, we are presented with a sole issue: whether the Chancery Court erred by granting TCI’s motion for summary judgment.

STANDARD OF REVIEW

A plaintiff alleging pregnancy discrimination

shall have the burden of establishing a prima facie case of intentional discrimination or retaliation. If the plaintiff satisfies this burden, the burden shall then be on the defendant to produce evidence that one (1) or more

² Specifically, her counsel stated, “. . . one of the issues in our brief, we argued collateral estoppel. I’d like to say on the record we’re conceding that issue.”

legitimate, nondiscriminatory reasons existed for the challenged employment action. The burden on the defendant is one of production and not persuasion. If the defendant produces such evidence, the presumption of discrimination or retaliation raised by the plaintiff's prima facie case is rebutted, and the burden shifts to the plaintiff to demonstrate that the reason given by the defendant was not the true reason for the challenged employment action and that the stated reason was a pretext for illegal discrimination or retaliation. *The foregoing allocations of burdens of proof shall apply at all stages of the proceedings, including motions for summary judgment.* The plaintiff at all times retains the burden of persuading the trier of fact that the plaintiff has been the victim of intentional discrimination or retaliation.

Tenn. Code Ann. § 4-21-311(e) (effective June 10, 2011 to May 11, 2025)³ (emphasis added).

A trial court may grant summary judgment only if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Tenn. R. Civ. P. 56.04. The propriety of a trial court's summary judgment decision presents a question of law, which we review de novo with no presumption of correctness. *Kershaw v. Levy*, 583 S.W.3d 544, 547 (Tenn. 2019). When reviewing a grant of summary judgment, we “consider the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor.” *McCullough v. Vaughn*, 538 S.W.3d 501, 505 (Tenn. Ct. App. 2017).

“The moving party has the ultimate burden of persuading the court that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.” *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 83 (Tenn. 2008). As our Supreme Court has instructed,

when the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense.

Rye v. Women's Care Ctr. of Memphis, 477 S.W.3d 235, 264 (Tenn. 2015). When a party files and properly supports a motion for summary judgment as provided in Rule 56, “to survive summary judgment, the nonmoving party may not rest upon the mere allegations or denials of its pleading, but must respond, and by affidavits or one of the other means

³ Unless otherwise specified, all statutory references herein are to the version of the statute in effect when Ms. Zeiler refiled her complaint in December 2023.

provided in [] Rule 56, set forth specific facts . . . showing that there is a genuine issue for trial.” *Id.* at 265 (internal quotation marks and brackets in original omitted). In other words, the nonmoving party must demonstrate *at the summary judgment stage* “the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.” *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 889 (Tenn. 2019) (quoting *Rye*, 477 S.W.3d at 265).

DISCUSSION

The Tennessee Human Rights Act (“THRA”) is a comprehensive anti-discrimination statute that prohibits employers from failing or refusing to hire, discharging a person, or otherwise discriminating “against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual’s race, creed, color, religion, sex, age, or national origin[.]” Tenn. Code Ann. § 4-21-401(a)(1); *Goree v. United Parcel Serv., Inc.*, 490 S.W.3d 413, 426 (Tenn. Ct. App. 2015). The THRA

was designed to execute the policies embodied in the federal Civil Rights Acts of 1964, 1968, and 1972, including the Pregnancy Discrimination Act of 1978 (“PDA”). *Spann v. Abraham*, 36 S.W.3d 452, 462 (Tenn. Ct. App. 1999)] (citing Tenn. Code Ann. § 4-21-101(a)(1)). As such, “this Court has construed the Tennessee Human Rights Act under the framework of the federal statutes upon which it was patterned.” *Moore v. Nashville Elec. Power Bd.*, 72 S.W.3d 643, 651 (Tenn. Ct. App. 2001). “The same general analytical framework and allocation of the burden of proof is used for claims under both federal and state statutes, irrespective of whether the claim asserts discrimination on the basis of race, age, sex, or any other class protected under the [THRA].” *Bundy v. First Tenn. Bank Nat’l Ass’n*, 266 S.W.3d 410, 416 (Tenn. Ct. App. 2007) (citing *Dennis v. White Way Cleaners, L.P.*, 119 S.W.3d 688, 693 (Tenn. Ct. App. 2003)).

Pierce v. City of Humboldt, No. W2012-00217-COA-R3-CV, 2013 WL 1190823, at *9 (Tenn. Ct. App. Mar. 25, 2013) (bracketing in original omitted). Under the PDA, and thus the THRA, discrimination based on an individual’s sex includes discrimination based on a person’s “pregnancy, childbirth or related medical conditions.” *Spann v. Abraham*, 36 S.W.3d 452, 463 (Tenn. Ct. App. 1999) (citations omitted).

The goal of the burden-shifting framework in section 4-21-311(e) “is to progressively sharpen the inquiry into the elusive factual question of intentional discrimination.” *Templeton v. Macon Cnty.*, 576 S.W.3d 691, 697 (Tenn. Ct. App. 2018) (quoting *Wilson v. Rubin*, 104 S.W.3d 39, 50 (Tenn. Ct. App. 2002)). Under this framework, the plaintiff has the initial burden to establish a prima facie case of discrimination. To do so, a pregnancy discrimination plaintiff must show: “(1) that she

was pregnant; (2) that she was qualified for her job; (3) that she was subjected to an adverse employment action; and (4) that there is a nexus between her pregnancy and the adverse employment action.” *Spann*, 36 S.W.3d at 465 (citations omitted). Pregnancy discrimination plaintiffs may establish the fourth element of their prima facie case “by demonstrating that comparable non-pregnant employees received more favorable treatment.” *Id.* (citations omitted). A prima facie case “raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors.” *Goree*, 490 S.W.3d at 427 (quoting *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577 (1978)). Importantly, however, a prima facie showing “is not the equivalent of a factual finding of discrimination.” *Id.* (quoting *Furnco Constr. Corp.*, 438 U.S. at 579).

In this case, it is undisputed that Ms. Zeiler satisfied the first two elements of her prima facie case: she was pregnant, and she was qualified for her job. As to the third element, Ms. Zeiler contends that she was subjected to one adverse employment action: she was terminated. Curiously, TCI seemingly contends that Ms. Zeiler was subjected to two adverse employment actions: she was first moved from full-time to part-time status, and she was later terminated. However, because it is Ms. Zeiler’s burden to establish a prima facie case, and she chose to pursue a claim based only upon her termination, we conclude that her termination was the sole adverse employment action that satisfies the third element of her prima facie case. Finally, two comparable nonpregnant employees in the Corporate Marketing division were not laid off, despite the loss of business. This fact combined with TCI’s decision to terminate her within three months of learning she was pregnant is enough to suggest a nexus between Ms. Zeiler’s pregnancy and her termination and, thus, satisfies the fourth element of her prima facie case. *See Asmo v. Keane, Inc.*, 471 F.3d 588, 593 (6th Cir. 2006) (explaining that temporal proximity between an employer’s learning of an employee’s pregnancy and an adverse employment action can satisfy the nexus requirement (collecting cases)).

Because Ms. Zeiler satisfied her prima facie burden, the burden shifted to TCI to produce evidence that one or more legitimate, nondiscriminatory reasons existed for her termination. “This ‘requires the employer to clearly set forth, through the introduction of admissible evidence, reasons for its actions which, if believed by the trier of fact, would support a finding that unlawful discrimination was not the cause of the employment action.’” *Templeton*, 576 S.W.3d at 698 (quoting *Wilson*, 104 S.W.3d at 50). Importantly, however, “[t]he burden on the defendant is one of production and not persuasion.” Tennessee Code Annotated § 4-21-311(e). Therefore, “by producing evidence of a nondiscriminatory reason, persuasive or not, [the] defendant meets its burden of production.” *Davis v. Reliance Elec.*, 104 S.W.3d 57, 62 (Tenn. Ct. App. 2002).

In its motion for summary judgment, TCI asserted that its initial decision to terminate Ms. Zeiler’s full-time employment “was based solely on the substantial reduction in business following the loss of the Tidelands Health business.” As evidence, it pointed

to Ms. Zeiler's refiled complaint which averred that her August 14 email stating that she was let go "due to [a] loss of business" was "factually accurate[;]" an excerpt of her deposition wherein she testified that Mr. Lundberg told her that her full-time employment was being terminated due to the loss of the Tidelands account and she "didn't doubt that it was true that [TCI] had lost business[;]" and Ms. Stinson's affidavit stating that the termination "was due to lack of business . . . and had nothing to do with the fact that [Ms. Zeiler] was pregnant." TCI also averred that on August 14 after Ms. Zeiler provided the doctor's note releasing her from work, she "was placed on leave and went home." For this, it relied upon Ms. Zeiler's deposition testimony and Ms. Stinson's affidavit regarding the timing of Ms. Zeiler's production of the doctor's note and departure on August 14. Finally, TCI asserted that she was terminated on August 18 due to "the malicious email" sent after her departure on August 14. In support thereof, it pointed to Ms. Zeiler's deposition testimony that she does not have any evidence that Mr. Lundberg did not believe that she had breached the nondisclosure agreement; Ms. Stinson's affidavit stating that Ms. Zeiler was ultimately terminated "because she had communicated information that was confidential and did so in a manner that reflected negatively" on TCI; and a letter from Mr. Lundberg notifying Ms. Zeiler that she was terminated effective August 14 due to her breach of the nondisclosure agreement. Each of these reasons constitutes a "legitimate, nondiscriminatory reason" for the termination of Ms. Zeiler's full-time employment, and TCI thus satisfied its burden of production under section 4-21-311(e).

Finally, the burden shifted back to Ms. Zeiler to demonstrate that the reasons given by TCI for her termination were not the true reasons and were instead pretext for pregnancy discrimination. "Most commonly, employees accomplish this by identifying or producing evidence '(1) establishing that the proffered reasons have no basis in fact, (2) establishing that the proffered reasons did not actually motivate the adverse employment action, or (3) establishing that the proffered reasons were insufficient to motivate the adverse employment action.'" *Templeton*, 576 S.W.3d at 698 (quoting *Wilson*, 104 S.W.3d at 51). To survive summary judgment, Ms. Zeiler was required at this stage to demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in her favor. *See TWB Architects*, 578 S.W.3d at 889 (citing *Rye*, 477 S.W.3d at 265). Responding to TCI's proffered reasons, Ms. Zeiler argued that "[e]vidence of pretext is abundant":

First, in the weeks before she was laid off, [Mr.] Lundberg repeatedly questioned [Ms.] Zeiler about her plans following the delivery of her child. . . . Second, in the August 2, 2017 meeting wherein [Mr.] Lundberg laid [Ms.] Zeiler off effective August 31, 2017, [Mr.] Lundberg specifically referenced that she would soon be going on maternity leave anyway, seemingly giving a justification for the action. . . . Third, [Mr.] Lundberg, [Ms.] Stinson, and [Mr.] Phillips all told other employees that [Ms.] Zeiler was not laid off, but was simply going part-time as of September 1, 2017, something that was patently false. . . . Fourth, after [Ms.] Zeiler had already

been terminated, TCI changed the reason for that termination from “laid off” to “discharged.” . . . Finally, after [Ms.] Zeiler was discharged, TCI contacted the clients and vendors and told them that she was going part time and it had nothing to do with a loss of business or the financial condition of the business, again – patently false information.

A pregnancy discrimination plaintiff is not required to refute every piece of the defendant’s evidence in order to survive summary judgment. Instead, “[w]hat is important is whether the inconsistencies, contradictions, and other independent evidence create a credibility issue that a trier of fact must resolve.” *Templeton*, 576 S.W.3d at 706 (citing *Frame v. Davidson Transit Org.*, 194 S.W.3d 429, 441 (Tenn. Ct. App. 2005)). In other words, “the plaintiff need only ‘present some evidence, whether direct or circumstantial, which is sufficient to create a genuine issue of material fact as to the motivations of the defendant.’” *Id.* (quoting *Dennis v. White Way Cleaners, L.P.*, 119 S.W.3d 688, 694 (Tenn. Ct. App. 2003)). Mr. Lundberg’s repeated questioning of whether Ms. Zeiler intended to return to work full time after maternity leave—even after she purportedly assured him that she was intending to return full time—could be perceived by a trier of fact as speculation regarding the impact of Ms. Zeiler’s pregnancy on her work, “and an employer’s speculation or assumption about how an employee’s pregnancy will interfere with her job can constitute evidence of discriminatory animus.” *Asmo*, 471 F.3d at 595 (citing *Laxton v. Gap Inc.*, 333 F.3d 572, 583–84 (5th Cir. 2003)). This is compounded by Mr. Lundberg’s alleged comment about her impending maternity leave during the August 2 meeting in which he informed Ms. Zeiler that her full-time employment would be terminated.⁴ Moreover, the timing of TCI’s decision to terminate Ms. Zeiler is additional evidence Ms. Zeiler can rely upon to support her claim of pretext; she alleges that Mr. Lundberg’s questioning of her began within approximately six weeks of him finding out she was pregnant, and she was notified that her full-time employment was being terminated less than three months after Mr. Lundberg learned she was pregnant. *See id.* at 598 (noting that “temporal proximity can be used a[s] ‘indirect evidence’ to support an employee’s claim of pretext” (quoting *DiCarlo v. Potter*, 358 F.3d 408, 421 (6th Cir. 2004))).

In the context of summary judgment, where we examine the evidence in the light most favorable to the nonmoving party, Ms. Zeiler’s arguments are sufficient to create a genuine issue of material fact as to TCI’s motives. Accordingly, the trial court erred in granting summary judgment in favor of TCI, and we reverse.⁵

⁴ In their respective depositions, Ms. Zeiler accuses Mr. Lundberg of making this comment, and Mr. Lundberg denies having made this comment. This dispute further evidences the inappropriateness of summary judgment given the specific facts of this case.

⁵ We note that TCI argues that even if Ms. Zeiler established discrimination with respect to the initial adverse employment action, i.e. the “layoff,” ultimately Ms. Zeiler was terminated because of her subsequent email and violation of her nondisclosure agreement. However, assuming this is true, her subsequent misconduct could potentially limit her damages but would not completely bar her claim. *See*

CONCLUSION

The judgment of the Chancery Court for Sullivan County is hereby reversed, and this case is remanded for further proceedings consistent with this opinion. Costs on appeal are assessed to the appellee, The Corporate Image, Inc., for which execution may issue if necessary.

KRISTI M. DAVIS, JUDGE

Teter v. Republic Parking Sys., Inc., 181 S.W.3d 330, 340 n.2 (Tenn. 2005) (reaching the same conclusion in a case implicating the after-acquired evidence doctrine (citing *McKennon v. Nashville Banner Pub. Co.*, 513 U.S. 352, 362–63 (1995))).