[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13874
Non-Argument Calendar

D.C. Docket No. 1:17-cv-04405-MLB

JEMIMA PEDDIE,

Plaintiff-Appellant,

versus

INCOMM,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(November 17, 2020)

Before BRANCH, BRASHER, and FAY, Circuit Judges.

PER CURIAM:

Jemima Peddie, proceeding *pro se*, appeals the summary judgment in favor of Interactive Communications International, Inc. ("InComm") on her discrimination, harassment, and retaliation claims brought under 42 U.S.C. §§ 2000e-2(a) and

2000e-3(a). Peddie argues that summary judgment was improper because the district court erred in (1) failing to construe certain evidence in her favor and (2) disregarding some of her allegations as a "sham affidavit." Upon consideration, we conclude that Peddie's arguments lack merit. Accordingly, we affirm.

I. BACKGROUND

Peddie is an African American female employee of InComm. Peddie was preceded in her position at InComm by Courtney Donnelly, a Caucasian female. In 2015, several incidents occurred at InComm between Peddie and various InComm supervisors and coworkers. This appeal concerns two of these incidents.

First, Peddie alleges that InComm manager Clio Federici made remarks to Peddie indicating that she "was treated differently because she is black." Federici had held a meeting to resolve a disagreement between Peddie and one of Peddie's clients. Although the client acted unprofessionally, Federici defended Peddie and cleared up the client's confusion regarding the situation. After the meeting, Federici allegedly told Peddie her suspected explanation for the client's conduct: "I think it's because you're black because Courtney used to yell and scream at people. You don't do that and I get more complaints about you than I did about her." Peddie was not demoted or suspended as a result of this incident.

Second, Peddie alleges that after she complained to InComm about its conduct in the above and other incidents, "[her] seat was moved away from her Caucasian

co-workers who worked with her in her department." Both parties agree that this allegation appears only in a post-deposition affidavit.

In 2017, Peddie filed a *pro se* complaint against InComm for discrimination, harassment, and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2(a) and 2000e-3(a). After discovery, InComm moved for summary judgment on all of Peddie's claims. The district court granted summary judgment in favor of InComm, and Peddie timely appealed.

II. STANDARD OF REVIEW

"We review a district court's grant of summary judgment *de novo*, viewing all the evidence, and drawing all reasonable factual inferences, in favor of the nonmoving party." *Amy v. Carnival Corp.*, 961 F.3d 1303, 1308 (11th Cir. 2020) (citation omitted). "A grant of summary judgment is proper if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Id.* (cleaned up).

"A fact is 'material' if it might affect the outcome of the suit under the governing law." *BBX Capital v. FDIC*, 956 F.3d 1304, 1314 (11th Cir. 2020) (cleaned up) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "A dispute over such a fact is 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *BBX Capital*, 956 F.3d at 1304 (cleaned up) (quoting *Anderson*, 477 U.S. at 248).

"[A] district court's decision to strike an affidavit as a 'sham' is reviewed for abuse of discretion." *Furcron v. Mail Ctrs. Plus, LLC*, 843 F.3d 1295, 1306 (11th Cir. 2016) (citation omitted). "A district court abuses its discretion where its decision rests upon a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact." *Id.* at 1304 (internal quotation marks and citation omitted).

III. DISCUSSION

Peddie raises two arguments on appeal. But before examining them, we must address a preliminary matter. InComm argues that Peddie's arguments on appeal should be deemed waived because she failed to comply with Federal Rule of Appellate Procedure 28 by not properly citing to the record. However, this rule's citation requirement "is not jurisdictional, but one of prudential constraint." *Mendoza v. U.S. Att'y Gen.*, 327 F.3d 1283, 1286 n.4 (11th Cir. 2003). And Peddie filed her brief *pro se*. Consequently, we exercise our discretion to review her appeal because the underlying facts upon which she bases her arguments are clear from the record. *See id.* (reviewing the appellant's counseled brief despite its noncompliance with Rule 28 because it specified underlying facts that were readily ascertainable in a relatively small record). Accordingly, we turn to Peddie's two arguments.

A. Federici's Remarks

First, Peddie argues that although she was the nonmoving party, the district court failed to view Federici's remarks in her favor when granting summary judgment against her. She further argues that if it had viewed those remarks in her favor, a genuine dispute of material fact would exist because "a jury could reasonably conclude that more probably than not, [she] was subjected to disparate treatment by InComm . . . ."

Title VII prohibits employers from discriminating against an employee "because of" her race. 42 U.S.C. § 2000e-2(a)(1). A plaintiff may prove a Title VII discrimination claim "through either direct evidence or circumstantial evidence." *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 920 (11th Cir. 2018) (citation omitted). However, "[a] plaintiff must show that an adverse employment action was taken against [her] regardless of whether [she] is relying on direct evidence of discrimination or employing the burden-shifting approach established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), for cases in which only circumstantial evidence is available." *Hipp v. Liberty Nat. Life Ins. Co.*, 252 F.3d 1208, 1231 (11th Cir. 2001) (citation altered) (citation omitted).

"Not all employer actions that negatively impact an employee qualify as adverse employment actions." *Howard v. Walgreen Co.*, 605 F.3d 1239, 1245 (11th Cir. 2010) (internal quotation marks omitted) (citing *Davis v. Town of Lake Park*,

245 F.3d 1232, 1238 (11th Cir. 2001)). Instead, only employment actions resulting in "a *serious* and *material* change in the terms, conditions, or privileges of employment so that a reasonable person in the circumstances would find the employment action to be materially adverse" qualify as adverse. *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 921 (11th Cir. 2018) (cleaned up). Such actions involve "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *See Davis*, 245 F.3d 1232 at 1239 (citing *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 760–761 (1998)).

Here, Peddie has failed to establish that she was subjected to an adverse employment action. It is undisputed that Peddie held the same job position throughout the time period of the incidents in question and received a pay raise each year. Peddie does not even allege that she suffered any detrimental change in job responsibilities, any harm to her pay or other benefits, or that she was fired, denied a promotion, or demoted. Federici's remarks about why certain clients had complained about Peddie do not create a genuine dispute of material fact on this issue.

B. The Seat-Moving Incident

Second, Peddie argues that the district court erred in disregarding Peddie's allegations about the seat-moving incident as a "sham affidavit." Consequently,

Peddie must show that the district court abused its discretion in disregarding these allegations.

"The Eleventh Circuit, in limited circumstances, allows a court to disregard [a party's] affidavit as a matter of law when, without explanation, [the affidavit] flatly contradicts [the party's] own prior deposition testimony for the transparent purpose of creating a genuine issue of fact where none existed previously." *Furcron*, 843 F.3d at 1306 (citations omitted). "However, the rule only operates in a limited manner to exclude unexplained discrepancies and inconsistencies, as opposed to those which create an issue of credibility or go to the weight of the evidence." *Id.* at 1306 (citation omitted).

Here, Peddie's allegation that her seat was moved away from her Caucasian colleagues appears only in her post-deposition affidavit and contradicts her prior deposition testimony. Specifically, her deposition testimony describes several incidents from her complaint and other documents, none of which related to her seat being moved. In her deposition, Peddie was repeatedly asked whether these incidents were her only allegations in support of her discrimination and retaliation claims, and she answered affirmatively each time. The district court did not abuse its discretion in disregarding her post-deposition allegation as a "sham."

IV. CONCLUSION

For the reasons stated above, we **AFFIRM** the district court's grant of summary judgment.